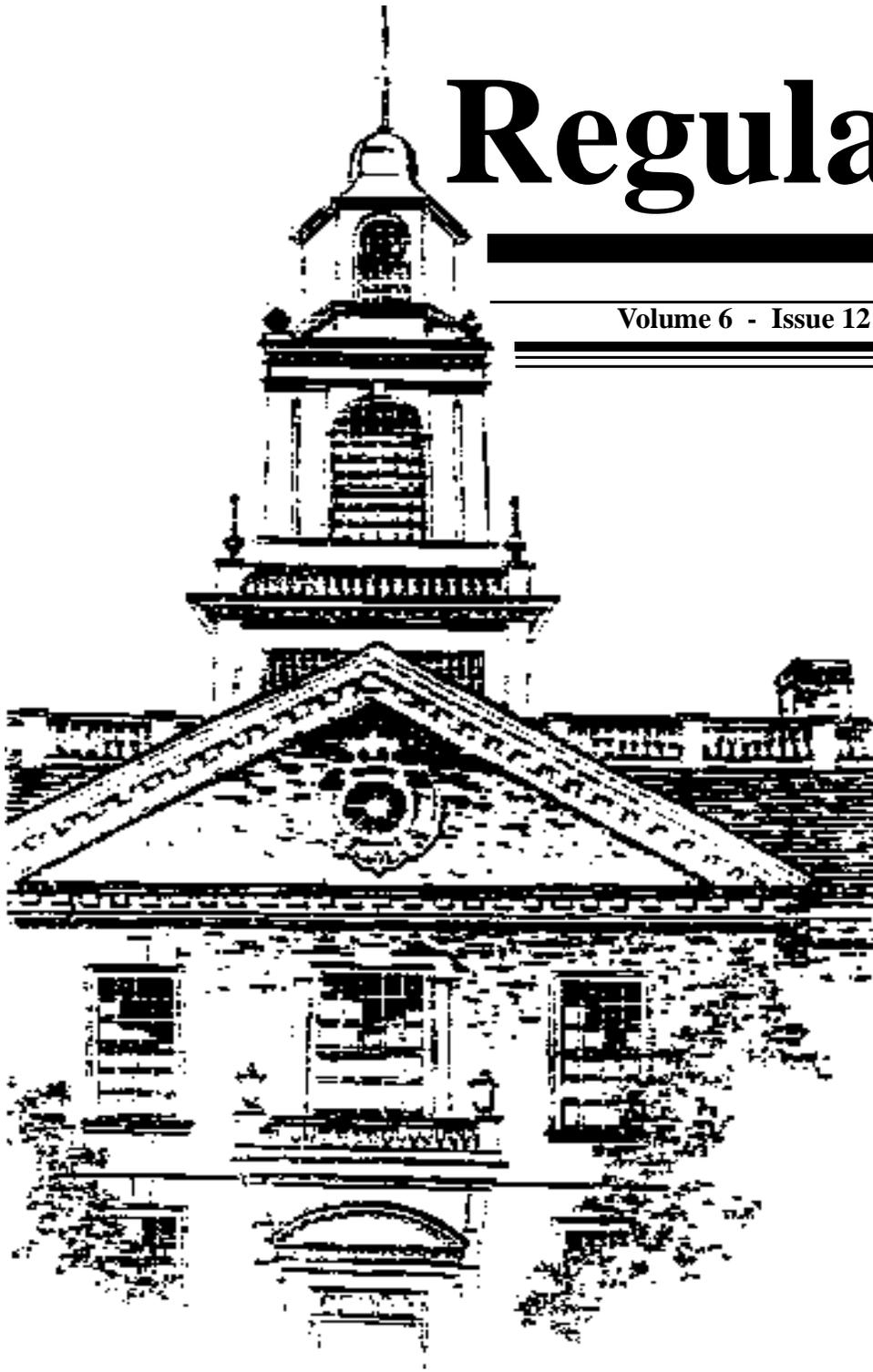

Delaware Register of Regulations



Issue Date: June 1, 2003

Volume 6 - Issue 12

Pages 1527 - 1749

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Proposed

Final

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before May 15, 2003.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

6 DE Reg. 279 - 280 (09/01/02)

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

24 DE Admin. Code 1900
Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del. C.** §1906(1))

The Delaware Board of Nursing in accordance with 24 **Del.C.** 1906(1) has proposed to revise the Rules and Regulations regarding Board committees.

The proposed revisions to Section 12 of the Board's Rules and Regulations will define selection of committee members, term limits, and committee attendance.

A public hearing will be held on Wednesday, July 9, 2003 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516 or 744-4515. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be July 9, 2003.

12.0 Advisory Committees**12.1 Appointment of Committees**

12.1.1 The Board may appoint advisory committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of no less than five members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

12.2 Membership of Committees

12.2.1 ~~Potential members shall submit resumes and receive Board approval prior to appointment. The Executive Director of the Board of Nursing shall make a call for applications for potential members to fill vacancies on the Board's advisory committees. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and each committee chair of the Board of Nursing. They shall then make recommendations with rationales to the Board of Nursing for approval and appointment of the members to advisory committees.~~

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

12.2.3 Members shall serve two-year terms.

12.2.4 The Executive Director shall verify members' continued interest in serving on the Board's advisory committees prior to expiration of their two-year term. The Executive Director shall submit the names of the committee members who are interested in serving another term to the Board of Nursing for reappointment.

12.2.5 Members who miss three consecutive meetings shall be reported to the Board, which may appoint a replacement member.

12.3 Joint Practice Committee

12.3.1 Nursing Membership

12.3.1.1 Members are selected 24 Del.C., § 1906(19)

12.3.1.2 The Board of Nursing shall appoint the Advanced Practice Nurses (APN) under the following guidelines:

12.3.1.2.1 At least one of the APN members shall be a Clinical Specialist, one APN member a Certified Nurse Midwife, one APN member a Certified Registered Nurse Anesthetist, and two APN members Nurse Practitioners. If there is no qualified APN available in the needed specialty, then appointments shall be made from APNs in other specialties.

12.3.1.2.2 The APNs must have independent prescriptive authority to be a member of the JPC.

12.3.1.2.3 The Board of Nursing shall appoint one public member.

12.3.1.3 One of the Board of Nursing appointees shall be a current Board of Nursing Member.

12.3.1.4 The Executive Director of the Board of Nursing shall make a call for applications for potential members to fill vacancies on the JPC. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and the APN member of the Board of Nursing. They shall then make recommendations to the Board of Nursing for approval and appointment of the members to the JPC.

12.3.1.5 Members shall serve two-year terms.

12.3.1.6 The Executive Director shall verify members' continued interest in serving on the JPC prior to expiration of their two-year term. The Executive Director shall submit the names of the JPC members who are interested in serving another term on the JPC to the Board of Nursing for reappointment to the JPC.

12.3.1.7 Members who miss three consecutive meetings shall be reported to the appointing Board, which may appoint a replacement member.

12.3.1.8 JPC shall be staffed by the Executive Director of the Board of Nursing or designee who shall assist the JPC in carrying out its duties.

12.3.2 Officers

12.3.2.1 JPC members shall elect a Chair and Vice-Chair each September.

12.3.2.2 The Chair shall preside at meetings and hearings.

12.3.2.3 The Vice-Chair shall preside at the meetings and hearings in the absence of the Chair.

12.3.2.4 In the absence of the Chair and Vice-Chair, the next senior member shall preside.

12.3.3 Meetings

12.3.3.1 Meetings will be scheduled in

accordance with all Laws and Rules and Regulations that apply to Committees under the Division of Professional Regulation.

12.3.3.2 Five members of the JPC constitute a quorum.

12.3.3.3 A meeting calendar shall be approved by the JPC each September.

12.3.3.4 The JPC shall meet as necessary to carry out its responsibilities as defined in 24 Del. C., 1906(20).

12.3.3.5 The Board of Nursing Members on the JPC shall give the committee report at each Board of Nursing meeting. The Executive Director shall give the report if the Board Member is absent.

See 5 DE Reg. 1606 (2/1/02)

*** PLEASE NOTE: AS THE REST OF THE REGULATIONS WERE NOT CHANGED, THEY ARE NOT BEING REPRINTED HERE.**

DEPARTMENT OF AGRICULTURE**NUTRIENT MANAGEMENT PROGRAM**

3 DE Admin Code 703

Statutory Authority: 3 Delaware Code,
Sections 2220, 2221 (3 Del.C. §§ 2220, 2221)

PLEASE TAKE NOTICE that, pursuant to 3 Del.C. §§ 2220 and 2221, the Department of Agriculture has developed, in conjunction with the Delaware Nutrient Management Commission, and proposes to adopt regulations establishing requirements for implementation of mandatory nutrient management plan reporting pursuant to Delaware's nutrient management laws (3 Del.C. Chapter 22) and Section 5, 72 Del. Laws, c. 60, and for persons selected for mandatory nutrient management plan reporting to register with the Commission. These regulations are proposed to meet the mandate set forth in Section 5, and also 3 Del.C. Chapter 22, and put into effect the purpose of that chapter to help improve and maintain the quality of Delaware's ground and surface waters in the interest of the overall public welfare. These proposals represent new substantive and procedural regulations in areas not previously regulated, and their term shall be permanent unless subsequently amended or repealed in accordance with the Administrative Procedures Act (29 Del.C. Chapter 101).

The Department of Agriculture, in conjunction with the Delaware Nutrient Management Commission, will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department and the Commission in care of William R. 0, Nutrient Management Program Administrator,

at the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. The final date to submit written comments shall be July 1, 2003. Copies of the proposed regulations may be obtained by contacting Mr. Rohrer.

703 Mandatory Nutrient Management Plan Reporting Implementation Regulations

Developed with the Guidance, Advice and Consent of
The Delaware Nutrient Management Commission

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code [72 Del. Laws, c. 60]. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing a nutrient management planning program and the development of nutrient management plans. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

1.0 Authority

1.1 These regulations are promulgated pursuant to the authority provided by Sections 2220 and 2221, Chapter 22, Title 3, of the Delaware Code.

2.0 Purpose

2.1 The purpose of these regulations is to establish requirements for implementation of mandatory nutrient management plan reporting pursuant to Section 5, 72 Del. Laws, c. 60.

3.0 Registration Requirement For Persons Selected For Mandatory Nutrient Management Plan Reporting Pursuant To Section 5, 72 Del. Laws, c. 60.

3.1 Persons notified that they have been selected by the Commission to be phased into the nutrient management planning program and mandatory nutrient management plan reporting (pursuant to Section 5, 72 Del. Laws, c. 60) shall register with the Commission within thirty (30) days of receiving such notice. Registration shall be made in writing, by completing and submitting, to the Nutrient Management Program Administrator, a registration form approved by the Commission.

3.2 Failure to register within the required period shall subject the person(s) failing to respond to the penalty provisions of Title 3, Chapter 22, of the Delaware Code.

3.3 If the Commission sends such notification by registered mail, the return receipt or other official proof of

delivery shall constitute presumptive evidence that the notice mailed was received by the person(s) or the latter's agent; and the notation of refusal shall constitute presumptive evidence that the refusal was by the person(s) or the latter's agent.

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. §10103)

The Commission issues these repropoed rules pursuant to 3 *Del.C.* §10103 and 29 *Del.C.* §10115. The Commission will accept written comments from June 1, 2003 through June 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on June 30, 2003 at 10:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John F. Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. These rules were published in the May, 2003 Register with a listed public hearing date of May 21, 2003. However, due to a scheduling issue, the public hearing can not be held on May 21, 2003 so the Commission is resubmitting the rules for publication.

The Commission repropoed the following three rule amendments:

1) amend Rule 1.28 to clarify the definition of "Meeting" to include all race dates approved by the Commission under 3 *Del. C.* §10122(c);

2) amend Rule 3.02(a) to clarify that the authority of the Stewards at the Meeting shall be during the period as required by the Commission; and

3) amend Rule 19.01(d) to provide that one steward may hold a hearing during emergencies or during periods when there is no live racing.

Part 1 -- Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

1.01 Added money:

Cash, exclusive of trophy or other award, added by the Licensee to stakes fee paid by subscribers to form the total purse for a stakes race.

1.02 Age:

The number of years since a horse was foaled, reckoned as if such horse were foaled on January 1 of the year in which such horse was foaled.

1.03 Arrears:

All sums due by any permittee or registrant as reflected by his account with the Licensee or the Horsemen's Bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

1.04 Authorized Agent:

Any person currently registered as an agent for a registered-owner principal by virtue of a notarized appointment of agency properly and fully lodged with the Licensee.

1.05 Betting Interest:

A single horse, or more than one horse joined as a "mutuel entry" or joined in the "mutuel field", on which a single pari-mutuel wager may be placed.

1.06 Bleeder:

Any horse known to have bled from its nostrils during a workout or race or is found to have bled internally by endoscopic examination. See Rule 15.02, Paragraph (a).

1.07 Breeder:

Owner of the dam of a horse at the time such horse was foaled. A horse is "bred" at the place of its foaling.

1.08 Claiming Race:

Any race in which the ownership of every horse running therein may be transferred in conformity with these Rules.

1.09 Closing:

Time published by the Licensee after which entries for a race will not be accepted.

1.10 Commission:

The Delaware Thoroughbred Racing Commission. "Commissioner" is a member of the Commission.

1.11 Day:

Any 24-hour period beginning at 12:01 a.m. and ending at midnight. "Racing Day" is a day on which races are conducted. "Calendar Days" are those consecutive days counted irrespective of number of "Racing Days."

1.12 Declaration:

Withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these Rules.

1.13 Disciplinary Action:

That action taken by the Stewards, by the Licensee, or by the Commission, for a Rule violation; it can include suspension, revocation, voidance of a permit, authorization or registration, ejection or exclusion from the Licensee's grounds, or assessment of a forfeiture, or reprimand, or any

combination thereof.

1.14 Disqualification:

An order of the Stewards revising the order of finish of a race.

1.15 Entry:

The act of nominating a horse for a race in conformance with these Rules. See "Mutuel Entry".

1.16 Equipment:

Accouterments, other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, include whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

1.17 Exhibition Race:

A race between horses of diverse ownership for which a purse is offered by the Licensee, but on which no pari-mutuel wagering is permitted.

1.18 Field or Mutuel Field:

A single betting interest involving more than one horse which is formed when the number of horses starting a race exceeds the numbering capacity of the totalizator and where all horses of a higher number are grouped in the "mutuel field".

1.19 Forfeit:

Money due by a permittee, registrant or other person to whom these Rules apply because of an error, fault, neglect of duty, breach of contract, or alternative order of the Stewards.

1.20 Handicap Race:

A race in which the weights to be carried by the horses therein are assigned by the Licensee's Handicapper with the intent of equalizing the chances of winning for all horses entered. A "free handicap" is a handicap for which no nominating fee is required to be weighted, but an entrance and/or starting fee may be required for starting therein.

1.21 Horse:

Any Thoroughbred, whether mare, gelding, colt or filly, which is registered as such with the Jockey Club in Lexington, Kentucky, or, for Steeplechase racing purposes, by the National Steeplechase Association in Fair Hill, Maryland and any Arabian whether mare, gelding, colt or filly which is registered as such with the Arabian Horse Registry of America, Inc. in Westminster, Colorado and for which an Identification Supplement has been issued.

In these rules of racing, unless otherwise noted, the use of the word "Thoroughbred" shall likewise apply to Arabian horses.

1.22 Ineligible:

A horse or person not qualified, not permitted, or not authorized under these Rules or conditions of a race to participate in a specified racing activity.

1.23 Jockey:

A rider currently authorized to ride in races as a Jockey, or Apprentice Jockey, or Amateur Jockey, or a provisional Jockey permitted by the Stewards to ride in two races prior to applying for a permit.

1.24 Lessee:

A registered Owner whose interest in a horse is a leasehold.

1.25 Licensee:

Any person, or persons, or corporation, licensed by the Commission to conduct a recognized race meeting at a particular racetrack within this State. When used herein, the word refers to that Licensee of the racetrack at which any matter or thing calling for the application of these Rules arises or occurs.

1.26 Maiden:

With respect to flat races, a horse which has never won a flat race at a recognized meeting in any country; a "maiden" which was disqualified after finishing first remains a "maiden"; race conditions referring to "maidens" shall be interpreted as meaning "maidens" at the time of starting.

In flat races a horse is still a maiden though a winner of a steeplechase or hurdle race, and in steeplechase and hurdle races a horse is still a maiden though a winner on the flat.

1.27 Match Race:

A race between two horses for which no other horses are eligible.

1.28 Meeting:

The entire period of consecutive days, exclusive of dark days, granted by the Commission to a Licensee for the conduct of racing, beginning at 12:01 a.m. of the first racing day and extending through a period ending at 11:59 p.m. after the last scheduled race on the last day, which includes all race dates approved by the Commission under 3 Del. C. §10122(c) including racing dates limited exclusively to the receiving and accepting of wagers or bets on electronically televised simulcasts. See "Recognized Meeting".

Rule 1.28 Rev. March 1976.

1.29 Month:

A calendar month.

1.30 Mutuel Entry:

A single betting interest involving two or more horses

entered in the same race and joined for pari-mutual purposes because of common ties as to ownership so that a wager on one horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry".

1.31 Mutuel Field:

See "Field".

1.32 Nominator:

The person in whose name a horse is entered for a race.

1.33 Owner:

Any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly registered and approved by Licensee as a person responsible for such horse.

1.34 Permittee:

Any person authorized by or registered with and approved by Licensee to participate in any designated way in racing at the location where Licensee is authorized to conduct a racing meet. See "Registrant".

1.35 Place:

When used in the context of a single position in the order of finish in a race, "Place" means second; when used in the context of a pari-mutuel wagering, a "Place" wager is one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "Place or Placing" means finishing first, or second, or third. See "Unplaced".

1.36 Post:

The starting point of a race.

1.37 Post Position:

The relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

1.38 Post Time:

The advertised moment scheduled for the arrival of all horses at the starting point for a race.

1.39 Prize:

The combined total of any cash, plate, purse, premium, stake, trophy, reward or object of value awarded to the Owners of horses according to order of finish in a race. No race shall be authorized or permitted for a purse, stake or reward of less than \$700.00, except in the event of a split race, in which case the purse, stake or reward shall be equally divided.

Rule 1.30 Rev. July 1977.

1.40 Purse:

The gross cash portion of the prize for which a race is run.

1.41 Purse Race:

Any race for which entries close less than 72 hours prior to its running, and for which Owners of horses entered are not required by its conditions to contribute money toward its purse.

1.42 Race:

A running contest between horses, ridden by Jockeys, over a prescribed course, at a recognized meeting, during regular racing hours, for a prize.

1.43 Racing Official:

Any person appointed and designated as such, and authorized to perform the duties prescribed, by the Licensee of any race meeting authorized by the Commission.

1.44 Recognized Meeting:

Any meeting with regularly scheduled races for horses on the flat or over jumps, licensed by and conducted under rules promulgated by a governmental body, including any such authority which has reciprocal relations with the Jockey Club of Lexington, Kentucky, whose race records can be provided to a Licensee by the Jockey Club and any such authority which has reciprocal relations with the American Horse Registry of America, Inc. in Westminster, Colorado.

1.45 Registrant:

Synonymous with "Permittee".

1.46 Registration Certificate:

A document issued by the Jockey Club of Kentucky certifying as to the name, age, color, sex, pedigree and breeder of a horse as registered by number with the Jockey Club, shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a "registration certificate" when a horse is recognized as a Thoroughbred for racing purposes in the United States, but is not recognized as a Thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

1.46(a) Reward: Any non-monetary prize, as defined in Rule 1.39, with a monetary value in excess of \$2,500.00, as determined by the fair market value of the prize, given to competitors in a race as an incentive to win, place or show.

The fair market value of any prize shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.

Rule 1.46(a) adopted 11/30/94.

1.47 Rules:

When used in the plural, shall be deemed to mean all

current "Rules" promulgated by the Commission; when used in the singular, shall be deemed to be confined to the numbered "Rule", and subparagraphs thereof, wherein such mention is made.

1.48 Rulings:

All determinations, decisions, or orders of the Stewards duly issued in writing and posted.

Rule 1.48 Rev. March 1976.

1.49 Scratch:

Withdrawal of a horse entered for a race after time of closing of entries therefor in conformance with these Rules.

1.50 Scratch Time:

Time set by Licensee's Racing Secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

1.51 Specimen:

Sample of blood, urine or saliva taken or drawn from a horse for chemical testing.

1.52 Stakes:

All fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race, such fees to be included in the purse.

1.53 Stakes Race:

A race which closes more than 72 hours in advance of its running and for which subscribers contribute money towards its purse.

1.54 Starters:

When referring to a horse -- a horse in a race when the starting-gate doors open in front of it at the moment the Starter (a Racing Official) dispatches the horses for a race.

1.55 Stewards:

Duly appointed Racing Officials with powers and duties as provided by these Rules.

1.56 Subscription:

Nomination or entry of a horse in a stakes race.

1.57 Thoroughbred Racing:

The conduct of running contests between horses, each of which is registered with the Jockey Club in Lexington, Kentucky and certified as having a Thoroughbred pedigree, or which is registered and certified by any other authority recognized by the commission, and each of which is ridden by a Jockey, under the auspices of an appropriate governmental regulatory body which has jurisdiction over such.

1.57(a) Trophy or Plate: For the purpose of calculating a prize or reward, a perpetual trophy or plate shall have no monetary value.

No trophy or plate shall be considered a reward, as defined by these rules and 3 Del. C. §10121 and 10141(c), unless the trophy or plate has a monetary value exceeding \$2500.00.

The fair value market of any trophy or plate shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.

Rule 1.57(a) adopted 11/30/94.

1.58 Unplaced:

Not among the first three horses finishing a race.

1.59 Walkover:

A race in which the only starter or all starters represent a single ownership.

1.60 Weigh In:

Presentation of a Jockey to the Clerk of Scales for weighing after a race.

Rule 1.57 Rev. March 1974.

1.61 Weigh Out:

Presentation of a Jockey to the Clerk of Scales for weighing prior to a race.

1.62 Weight for Age:

A standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse, as set out hereinafter in these Rules.

1.63 Workout:

A training exercise of a horse on the training or main track of a Licensee during which such horse is timed for speed over a specified distance.

1.64 Year:

Twelve consecutive months beginning with January and ending with December.

1.65 Mandatory Safety Equipment: Helmets and Vests

The helmets and vests that are to be worn while riding astride a horse or pony at any time, for any reason, while on the grounds of a racetrack that comes under the jurisdiction of the Delaware Racing Commission.

Rule 1.65 adopted 11/30/94.

PART 3 -- STEWARDS

3.01 Qualifications for Stewards:

No person shall qualify for appointment or approval as a

Steward unless:

(a) In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of Steward must be certified by a national organization approved by the Commission. An applicant for the position of steward must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a thoroughbred racing meeting for a period of not less than forty-five days during three of the last five years, or have at least five years of experience as a licensed jockey who has not less than one year as a licensed racing official at a thoroughbred racing meeting or have ten years of experience as a licensed thoroughbred trainer who has served not less than one year as a licensed racing official at a thoroughbred racing meeting.

(b) He is a person of good moral character and unblemished reputation.

See 2 DE Reg. 2042 (5/1/99)

3.02 Appointment of Stewards:

There shall be three Stewards at each race meeting, each of whom shall be appointed by the Commission. If required by the Commission, biographical data setting out the experience and qualifications of the nominees shall be provided to the Commission by the Licensee. No Steward shall serve until approved by the Commission.

~~(a) Stewards shall serve from one minute after midnight on the day before the first racing day until one minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the Stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission; during the period of the Meeting as required by the Commission~~

(b) Stewards may be replaced by the Commission at any time for failure to perform their duties properly and diligently;

(c) In the event that during a racing meet a Steward becomes ill, resigns, or is unable to serve for any reason, then the remaining Stewards, after obtaining approval of the Commission, shall nominate a successor or temporary Steward to the Commission for approval. In emergencies, a single Commissioner by telephone may approve appointment of a successor Steward.

See 4 DE Reg. 174 (7/1/00)

3.03 General Powers of the Stewards

The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

(a) Authority over all horses and all persons (except members of the Commission and its representatives, and except Licensee's management personnel and staff) on Licensee's grounds during a race meeting as to all matters relating to racing;

(b) To determine all questions, disputes, protests, complaints, or objections concerning racing (as distinguished from Licensee's business operations and affairs) which arise during a race meeting, and to enforce such determinations. All three Stewards shall be on Licensee's grounds before post time for the first race until conclusion of the last race. Except for good cause, all three Stewards shall be present in the Stewards' stand during the running of each race;

(c) It is preferred but not required that at least one Steward, or a designated representative of the Stewards, be present in the paddock at least 20 minutes before each race and remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and to inspect, with the Paddock Judge and Commission's Veterinarian, all horses for fitness;

(d) When requested by the Commission, to review all applications for registrations or permits to participate in racing, and, if requested by the Commission, to administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants to be registered as or receive a permit to be a Trainer, Jockey, Apprentice Jockey, Veterinarian, Dental Technician, or Farrier, and, when requested, make recommendations as to the qualifications of all applicants for registrations or permits to participate in racing;

(e) When requested by the Commission, to review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, Jockey and Apprentice Jockey contracts, appointments of agents, adoptions of racing colors or stable name, and advise upon the eligibility and appropriateness thereof for participation in racing in Delaware;

(f) To call for proof of eligibility of a horse or person to participate in a race if such is in question, and in the absence of sufficient proof to establish eligibility, the Stewards may rule such horse or person ineligible;

(g) To review stall applications and advise Licensee of undesirable persons, if any, among Owners and Trainers applying for stalls, and provide the Licensee with information pertaining to such undesirable persons;

(h) To supervise the taking of entries and receive all declarations and scratches, and determine all questions arising and pertaining to same. The Stewards may in their discretion refuse the entry of any horse by any person or refuse to permit a declaration or scratch, or may limit entries in any way. Upon suspicion of fraud or misconduct, the Stewards may excuse a horse or replace any Jockey or

Trainer, or Racing Official other than a Steward;

(i) All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

See 4 DE Reg. 174 (7/1/00)

3.04 Duties and Responsibilities of Stewards:

In addition to the duties and responsibilities necessary and pertinent to the general supervision, control and regulation of race meetings, and without limiting the authority of the Stewards to perform the same and other duties enumerated in these Rules, the Stewards shall have the following specific duties and responsibilities:

(a) To take cognizance of all misconduct or Rule infractions irrespective of whether complained of; to cause investigations to be made of all instances of possible Rule infractions; and to take such action as the Stewards may deem necessary to prevent a Rule infraction;

(b) At least one Steward, or his designated representative, shall be on Licensee's grounds from scratch time (or if not a racing day, when entries are first taken) until entries are closed. At least one Steward shall be present for the regular showing of racing films or video tapes.

(c) To suspend or revoke the registration or permit of a participant in racing, or eject or exclude from Licensee's grounds or any part thereof any person, whether a registrant or permittee or not, upon reasonable belief that a violation of these Rules has or is about to occur;

(d) To interpret and enforce these Rules, and to determine all questions pertaining to a racing matter not specifically covered by these Rules in conformity with justice and the customs of the turf;

(e) To issue decisions or rulings pertaining to racing which shall, if the Stewards deem proper, vary any arrangement for the conduct of a race meeting, to include without limiting thereby, postponing a race, or canceling a race, ruling a race run as "no contest", or the like;

(f) To request and receive assistance from the Commission, Racing Officials, members of the Thoroughbred Racing Protective Bureau, track security police, state or local police, in the investigation of possible Rule infractions;

(g) To conduct hearings on all questions concerning racing matters;

(h) In the event a regularly named Jockey or Trainer or Racing Official other than a Steward is unable for any reason to perform, the Stewards may select a substitute therefor.

(i) To see that all pari-mutuel betting machines are locked not later than the commencement of the race; to cause the "Inquiry" sign to be posted on the infield odds board as promptly as possible after the horses have crossed the finish line in a race if any doubt is held by a Steward or Patrol Judge as to the fairness of the running of such race; to cause

the "Objection" sign to be posted on the infield odds board upon the lodging of same; to cause the "Official" sign to be posted on the infield odds board after determining the official order of finish for purposes of pari-mutuel payoff;

(j) To review the patrol films or video tapes of each day's races before commencement of the successive day's races, and to draw up a list of riders (including all Apprentice Jockeys) whom the Stewards feel should review such films for instructional purposes and cause same to be posted in the Jockey's Room; the Patrol Judges shall assist in making up the film list and attend all film showings whenever their other duties permit;

(k) To maintain a daily log, reporting all actions taken by the Stewards on all controversies which arise during the day, such report to show name of track, date, weather, track conditions, claims, results of blood, saliva or urine tests to the extent available, rulings issued, and any other circumstances or condition regarded as unusual, such reports to be signed by all Stewards participating in such action and filed within 24 hours at such place as the Commission may designate;

(l) To make periodic inspections of the barn area and check track security; to make occasional, informal visits to the Jockeys' Room and observe weighing out and check security; such inspections and observations so made shall be noted in the Stewards' Report;

(m) To maintain a Minute Book which shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the Stewards, summary of interviews taken thereon, reports of investigations thereon, together with rulings issued thereon; if a ruling is not unanimous, the dissenting Steward shall record his or her reasons for such dissent; such Stewards' Minute Book shall be available to the Commission for inspection at all times, but shall not be open to public inspection;

(n) When requested to do so, the Stewards shall submit to the Commission a written report setting out the condition of the meeting and Licensee's grounds, together with any recommendation for the improvement thereof which they may deem appropriate.

(o) To impose fines upon any corporation, association or person participating in any Thoroughbred horse race meet at which pari-mutual wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of any provision of 3 Del. C. chapter 101 or these Rules and Regulations.

The Stewards may not impose a fine in excess of \$2500.00. If it is at any time deemed appropriate that a larger fine should be imposed, the Stewards shall so recommend to the Commission and shall refer the matter at hand forthwith to the Commission. The Stewards shall have the power to refer any matter before them to the Commission at any time if it appears proper because of the complexity,

severity, uniqueness or extent of the activities involved or likely to be involved. Included within these powers is the authority to impose partial sanctions, such as a conditional limitation on any person's use of facilities or of the enclosure.

(p) In suspensions of jockeys for any offense other than an offense involving fraud, the:

1. Effective date of the suspension is determined at the discretion of the stewards; and

2. Jockeys serving a suspension of ten days or less are permitted to ride in a designated race during the period of a suspension if the:

(a) Race is a stakes race with a purse of \$25,000 or more;

(b) Jockey is named not later than at the time set for the close of entries for the race; and

(c) Jockey agrees to serve an additional day of suspension in place of the day in which the jockey rides in a designated race.

Revised 10/20/93

Revised 5/26/93

PART 19 -- HEARINGS, REVIEWS AND APPEALS

19.01 Procedure Before Stewards:

(a) Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

(b) The notice required by the preceding subsection shall include:

1. Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

2. The time and place of hearing.

3. The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

(c) All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

(d) The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

(e) All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise,

if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

(f) If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.02 Review and Appeal:

Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.03 Application for Review:

An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

(a) Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250;

(b) Contain the signature of the applicant and the address to which notices may be mailed to applicant;

(c) Set forth the order or ruling requested to be reviewed and the date thereof;

(d) Succinctly set forth the reasons for making such application;

(e) Request a hearing;

(f) Briefly set forth the relief sought; and

(g) Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

(h) Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

See 3 DE Reg. 1542 (5/1/00)

19.04 Disposition of Review Application:

After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.05 Commission Hearing:

If the Commission grants any such application for review, before holding any hearing thereon, it shall:

(a) Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

1. Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

2. Except to applicant, a copy of the application for review.

(b) The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

(c) The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

(d) The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(e) All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

(f) The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(g) All or part of the evidence may be received in written form if the interest of the appearing parties will not

be substantially prejudiced thereby.

(h) The Commission may take official notice of technical facts or customs or procedures common to racing.

(i) The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

(j) Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

(k) The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.06 Continuances:

(a) All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(b) When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(c) An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

(d) If the Commission approves the application for

continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

See 3 DE Reg. 1542 (5/1/00)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)

605 Student Rights and Responsibilities

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend regulation 605 Student Rights and Responsibilities. The amended regulation now includes charter schools and corrections have been made to the title of the Department of Education Guidelines and to the titles of the regulations that should be used in developing the district and charter school policies. The regulation is being re-advertised to add the phrase "and whenever a student enters or re-enters the school during the school year" to the requirement that schools shall distribute and explain these policies to every student at the beginning of every school year.

This addition makes this regulation compatible with the language in the regulation on the Possession, Use and Distribution of Drugs and Alcohol.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses students' rights and responsibilities which can have an impact on school climate and student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to insure that all students have the same information about their rights and responsibilities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to assure that students' health and safety are adequately protected as found in the information on their rights and responsibilities.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all students' legal rights are protected as found in the information on their rights and

responsibilities.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation continues to give the districts and charter schools the authority and flexibility to develop their own rights and responsibilities policies in compliance with federal and state laws.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does require an increase in the distribution of the rights and responsibilities policies.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability continues to be in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation continues to be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the amended regulation? The amended regulation does require an increase in the distribution of the rights and responsibilities policies.

605 Student Rights and Responsibilities

~~1.0 All local school districts shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student in the school district at the beginning of every school year. The local district's policies shall be based on the Technical Assistance Manual for the Development of District Policies on Student Rights and Responsibilities and on the Department of Education regulations, Policy for the School Districts on the Possession, Use or Distribution of Drugs and Alcohol, and School District Compliance with the Gun-Free Schools Act.~~

1.0 All local school districts and charter schools shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student at the beginning of every school year and whenever a student enters or re-enters the school during the school year. These

policies shall be based on the Department of Education document *Guidelines for the Development of District Policies on Student Rights and Responsibilities*, as may be from time to time revised by the Department of Education, and on Department of Education regulations, Possession, Use or Distribution of Drugs and Alcohol, and Compliance with the Gun-Free Schools Act.

Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)

905 Federal Programs General Complaint Procedures

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend regulation 905 Federal Programs General Complaint Procedures in order to correct the names of the federal statutes referenced in 1.0 and to clarify the language and intent of the regulation. In 2.2 sixty calendar days was changed to sixty working days and in 3.2 thirty calendar days was changed to sixty working days to make it the same as 2.2. Corrections have also been made to the mailing address in 5.0 and the reference to children with disabilities in the note on IDEA.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to address the federal programs complaints process not the specifics of student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to address the federal programs complaint process and this process is related to assuring an equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the federal programs complaint process not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to address the federal programs complaint process which provides protection if a student's rights to services under the federal legislation listed in the regulation is not fulfilled.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not alter the authority and flexibility of decision making at the

local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not alter the reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will remain consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The federal laws have changed and the references must be corrected in the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to the State and local school boards remains the same.

905 Federal Programs General Complaint Procedures*

~~1.0 Programs that are covered by this complaint process include: Part A of Title I, Improving Basic Programs Operated by the Local Education Agency; Part B of Title I, Even Start Family Literacy Program; Part C of Title I, Migrant Education; Part D of Title I, Children and Youth who are Neglected, Delinquent, or at Risk of Dropping Out; Title II Eisenhower Professional Development Program; Subpart 2 of Part A Title III, State and Local Programs for School Technology Resources; Part A of Title IV, Safe and Drug Free Schools and Communities; and Title VI, Innovative Education Program Strategies, as required under the Elementary Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act (IASA) of 1994. In addition the Delaware Department of Education is extending the complaint procedures to include programs under the Goals 2000: Educate America Act of 1994.~~

1.0 This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1

Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A Safe and Drug Free Schools and Communities; Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

2.0 An organization or an individual may file a ~~written, signed~~ complaint regarding an alleged violation of Federal Program Statutes or regulations by the Delaware Department of Education or the Local Education Agency. ~~The alleged A written and signed~~ complaint shall be filed with the Delaware Department of Education ~~and may involve either a Local Education Agency or the State Education Agency.~~

2.1 The complaint shall include a statement specifying the alleged violation by ~~that~~ the State Education Agency or a Local Education Agency, ~~has violated a requirement of a Federal statute or regulation that applies to these Local Education Agency programs and the facts on which the statement is based.~~ Such statement shall include facts and documentation of the alleged violation.

2.2 The Delaware Department of Education shall ~~resolve~~ investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) calendar working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.

2.3 The Delaware Department of Education may conduct an independent on-site investigation of the complaint, if it is determined that an on-site investigation is necessary.

3.0 An organization or an individual ~~is encouraged to~~ shall file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

3.1 The complaint shall include a statement specifying the alleged violation by ~~that~~ the Local Education Agency ~~has violated a requirement of a Federal statute or regulation that~~

applies to the Local Education Agency's programs and the facts on which the statement is based. Such statement shall include facts and documentation of the alleged violation.

3.2 The superintendent or the agency head of the Local Education Agency shall ~~resolve~~ investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within ~~thirty calendar~~ sixty (60) working days of the receipt of the complaint.

3.3 An appeal of the Local Education Agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual making the appeal. The Delaware Department of Education shall ~~resolve~~ address the appeal in the same manner as a complaint, as indicated in 2.0.

4.0 Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Director of ~~Unified Planning and Quality Assurance~~ School Improvement
 Delaware Department of Education
 P. O. Box 1402
 Dover, Delaware 19903

* IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect ~~disabled~~ students with disabilities. See Regulation 925, Children with Disabilities.

See 2 DE Reg. 217 (8/1/98)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))

Educational Impact Analysis Pursuant To 14 Del. C. Section 122(D)

301 General Regulations For Certification Of Professional Public School Personnel

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend 301 General Regulations for Certification of Professional Public School Personnel by deleting it in its entirety and replacing it with regulations 1505 Professional Growth Programs, 1510 Initial License, 1513 Denial of License, 1514 Revocation of License, 1515 Emergency Certificate, 1516 Standard Certificate, 1519 Alternative Routes to Certification, and 1520 Substitute Teacher. Regulations 1511 Issuance and Renewal of Continuing License and 1584 Permits also contain matters that were addressed in regulation 301, thereby rendering those sections of regulation 301 redundant. It is necessary to amend this regulation in order to comply with changes in statute regarding the licensure and certification of educators. Additional changes in statute, enacted after the initial publication of this regulation, necessitated further amendments to the regulation. Those amendments made since the original publication of this regulation in the February, 2003 Register of Regulations were made to address additional changes in statute. Changes in the proposed amended regulations have also been made in response to comments received from the Department of Education. 1520 Substitute Teacher has been amended by deleting it in its entirety and reserving the number for future development. The regulation has been reconstituted as separate regulations which address the matters previously regulated in 301, but which comply with recent changes in statute. The reconstituted regulations, listed below, have also been renumbered to reflect their movement to the Professional Standards Board section of the Department regulations.

1505 Professional Growth Programs
 1510 Initial License
 1513 Denial of License
 1514 Revocation of License
 1515 Emergency Certificate
 1516 Standard Certificate
 1519 Alternate Routes to Certification
 1520 Substitute Teacher – Reserved

The existing 301 General Regulations for Certification of Professional Public School Personnel are affected by the amended regulations in the ways indicated in the column on the right, below:

Table 1:

1.0 Definitions	Incorporated in reconstituted regulations
2.0 Current Licenses, Certificates and Permits	1511 Issuance and Renewal of Continuing License, 1584 Permits
2.7.2 Substitute Teacher	1520 Substitute Teacher stricken - reserved
3.0 Testing Requirements	1510 Initial License
4.0 Application for Initial License	1510 Initial License
4.7 Denial of License	1513 Denial of License
5.0 Renewal of Licenses	1511 Issuance and Renewal of Continuing License
6.0 Licensure Agreements/Reciprocity	1510 Initial License, 1511 Issuance and Renewal of Continuing License
7.0 Revocation of Licenses/Certification	1514 Revocation of License
8.0 Denial of Licenses/Certifications	1513 Denial of License
9.0 Professional Growth Programs	1505 Professional Growth Programs
10.0 Certification/National Board of Professional Teaching Standards	stricken by change in statute
11.0 Alternative Routes to Certification Program for Secondary Teachers	1519 Alternative Routes to Certification

C. Impact Criteria

1. Will the amended help improve student achievement as measured against state achievement standards? The amended and new regulations address student achievement by establishing standards for initial licensure of teachers and for the issuance and renewal of continuing licenses to ensure that highly-qualified teachers teach Delaware students, and engage in appropriate professional development to ensure that they maintain current skills and knowledge.

2. Will the amended help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all teachers hired to teach students meet high standards for initial licensure and continuing licensure.

3. Will the amended help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure. Regulations concerning denial and revocation of licenses help to ensure students' health and safety by providing vehicles to deny or revoke licenses of individuals whose behavior poses a danger to students' health and safety.

4. Will the amended help to ensure that all students' legal rights are respected? The new regulations address educator licensure issuance, renewal denial, and revocation, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended and new regulations will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations? There is no additional cost to local school boards for compliance with the regulations.

~~**301 General Regulations for Certification of Professional Public School Personnel**~~

~~1.0 Definitions of terms~~

~~Credential Evaluation for Licensure through Transcript Analysis: A process through which persons who have not~~

graduated from a state approved teacher education program in a specific field may obtain a Standard license in Delaware. Official college/university transcripts shall be submitted to the Department of Education where they are audited for compliance with licensure requirements for the specific field.

Evaluation/Prescription Letter: A letter issued by Department of Education after the evaluation of an individual's college transcripts and other official documents. This letter lists any deficiencies that need to be met related to specific requirements for licensure in Delaware, as stated in this Manual. The letter may include deficiencies, such as coursework, test scores, experience verification and/or may state other specifics which need to be met for Standard licensure.

Initial Standard Certificate: A license that was issued in Delaware from 1982 through 1991. Issuance of this license indicates the individual met all requirements current during that time period for a specific area of licensure. In addition, the qualifying scores for the Pre-Professional Skills Tests were met before the Initial Standard Certificate was issued. This license had a validity period of five years, after which the license was converted to a Standard license, upon documentation of appropriate employment or coursework. (See Refresher Coursework and Recency Requirement) Expired Initial Standard licenses may be renewed as Standard licenses in the same content area provided refresher requirements are met.

Internship: One year of supervised, full time, successful experience in a setting appropriate to the area of licensure. An Internship may be sponsored by a college or university in conjunction with a particular set of program requirements; or it may be sponsored locally through employment by a district and in conjunction with the Department of Education.

Interstate Certification Agreement (ICA): A formal contract signed by individual member states of NASDTEC, in pairs, specifying the parameters of reciprocity. The Interstate Agreement is a binding, legal agreement/contract between two states. The states agree to accept teachers from programs approved under NASDTEC Standards as well as fully licensed, experienced personnel. The NASDTEC organization facilitates the signing of the agreement through an arm called the Interstate Contract Association. Reciprocity established in this manner operates under specific conditions that are clearly defined by the Interstate Agreement.

Licensure Via Approved Program: A process for acquiring a teaching license in Delaware and other NASDTEC states that requires graduating from a state approved teacher education program and meeting specific testing requirements set by the Delaware State Board of Education. Individuals who receive a Standard license in Delaware based on an approved program are

eligible for reciprocity with other states. Each state has its own individual set of testing requirements which the candidate must meet.

Limited Standard License: A license that is issued to an individual who is employed in a Delaware public school setting, but does not meet all of the requirements for Standard licensure in the area(s) of employment. It may be issued for a period of between one and six years. No salary reduction is required. This license is non-renewable.

NASDTEC: National Association of State Directors of Teacher Education and Certification, a national organization of State Department certification personnel and Standards Boards members who have the responsibility for state certification and program approval. This organization has developed and adopted a set of Standards which is used by each member state, in as much as possible. These Standards form the basis for the Reciprocity Agreement.

NCATE: National Council for the Accreditation of Teacher Education: One of two national accrediting bodies approved by the United States Department of Education. NCATE accreditation is voluntary in Delaware. Colleges/Universities apply to NCATE seeking to have both the education unit of the college/university and specific education programs given national recognition. Each program must still be approved by that state's Department of Education in order to have students graduating from such programs receive licensure in that state.

Occupational/Vocational Testing: The testing in the vocational field is a performance test in a particular trade given under strict guidelines. The National Occupational and Career Testing Institute (NOCTI) is the only vocational test available that allows an individual to demonstrate skill competency in a trade such as welding or plumbing. The NOCTI organization designs the competency tests and trains staff at institutional settings to administer the NOCTI examinations under specific standardized conditions. As the NTE is used to validate certain aspects of teaching, the NOCTI is used to validate certain skills in vocational trade areas.

Partial Assignment: A teaching assignment that is for no more than two periods per day for a one year period only. The individual who is given a partial assignment shall have previously taken at least fifteen semester hours of coursework in the content area of the partial assignment. The intent of the partial assignment is to meet specific emergency needs a district might encounter on a short term basis, for example, an enrollment bulge. If the district's situation warrants that the teacher remain in this assignment after the initial one year period, the teacher will be granted a Limited Standard license, allowing three additional years to meet all of the requirements for Standard licensure.

Permits: Permits are given for specific positions within the local school districts that do not require a Bachelor's degree, the PRAXIS I tests or a Standard license. Permits are

currently given to aides of all types and substitute teachers.

Processing Fee: A non-refundable, one-time fee that shall accompany all applications for initial Delaware certification for each evaluation requested.

Professional and Occupational Licenses: Certain non-educational fields require State of Delaware licenses to practice. These fields include Electricians, Plumbers, Cosmetologists, etc. as well as Nurses, Speech Pathologists, Physicians and others. If an individual works in a school setting and a State license is required for practice in Delaware, it is also required for the education position and for the licensure/certification of that individual. For example, all School Nurses must meet specific coursework and degree requirements for their educational position. In addition, they are required to maintain their State of Delaware license and continue its renewal according to Nursing Board requirements for continuing education.

Professional Status Certificate: A certificate that is issued after an individual has met all requirements for Standard licensure in a specific area and has been employed in a Delaware public school in that same area for three consecutive years. It is issued for a five-year period. The renewal of this certificate is a function of continued employment in a public school for three years out of each five-year renewal period.

Provisional License: A substandard license that required a 10% reduction in salary. It has not been issued since 7/1/91 and is no longer a valid Delaware license.

Recency Requirement: A requirement for either 6 semester hours of appropriate coursework or appropriate full time employment within the five year period immediately preceding application or evaluation for licensure. Recency requirements are as indicated: (1) the applicant's Bachelor's degree shall be conferred within the most recent five-year period; or (2) the applicant shall have completed appropriate college-level coursework within the most recent five-year period; or (3) the applicant shall have been employed in a full time position, in the area of licensure request, for three years during the most recent five year period.

Reciprocity: A process whereby an individual with a license or certificate issued by one state can receive an equivalent license in another state without meeting additional coursework requirements. Other non-academic requirements such as professional work experience or testing may still be required for the license. The process operates under a very specific set of previously agreed upon rules between the two states.

Refresher Coursework: Six semester hours of college-level coursework, taken either at the Bachelor's or Master's level from a regionally accredited institution, is required to meet the Recency Requirement for licensure. Coursework shall include one professional education elective and one elective in the specific content area of licensure. This coursework is required only if the applicant is

unable to meet Delaware's Recency Requirement.

Revocation of License/Certificate/Permit: Revocation is the process of rescinding a Delaware license/certificate/permit for reasons of immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty. Revocation may be considered at the request of a local school district or initiated by the Secretary of Education.

Specialized Assignment License: An assignment that is deemed necessary by a local public school district but for which no specific requirements for licensure exist is termed a Specialized Assignment. The license is issued on the basis of a job description for the position. A Standard License will be issued to an employed individual who meets all the qualifications of the job description, including passing PRAXIS I scores. A Limited Standard license will be issued if any requirements or qualifications are not met and can be attained. A Temporary License shall be issued when the person hired does not meet the job description for the position. Any certificate issued for a Specialized Assignment is valid only for the specific position for which it was issued. The certificate is not valid for use in another position, another district, or another state.

Standard License: A license issued when an individual has met all requirements for a specific area of licensure, including the testing requirement. It is issued for an indefinite period of time except within the Delaware public school setting, where it is current for a five year period. This license can only be renewed when the individual is currently working in a public school setting or other setting for which it is required by the State of Delaware, such as the correctional system.

Temporary License: A one-year non-renewable license issued to a district employee who meets neither the Standard nor Limited Standard requirements for a specific Delaware license and who is hired after August 15th of that school year. A 10% salary reduction is required. This license is a one year, non-renewable license and can be issued only one time to the same individual in the same area of licensure. Unless the individual holds a Standard license in another area, they are not eligible for a salary increment.

2.0 Current Licenses, Certificates and Permits

2.1 Professional Status Certificate: The Professional Status certificate shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who hold Standard Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.1.1 This license shall be issued to persons who meet the requirements for a Standard license and who have

been employed by a Delaware public school system for three (3) consecutive years of the previous five (5) years in the type of position for which the certificate is appropriate. The certificate shall be issued for a period of five (5) fiscal years.

2.2 Standard License: The Standard License shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who meet all requirements for Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.2.1 The Standard license shall be issued upon completion of all requirements in a single area of licensure, along with successful completion of the State of Delaware's requirement for testing 3.0, for a period of five (5) years.

2.2.2 The Standard license shall be issued to the following categories of employees which do not require a baccalaureate degree for full licensure, and/or which do not require successful completion of the State of Delaware's testing requirements (3.3): Manager of School Food Service Programs, Transportation Manager, Administrative Support Personnel, formerly Educational Secretaries. The issuance of this license shall not affect either the salary paid or the negotiating rights of individuals as currently specified in the Del. C.

2.2.3 The Standard license shall be issued to an employee of a Delaware public school district who has been employed in a Specialized Assignment, for which no specific requirements are defined, and who possesses the competencies and skills required for the special assignment (example: museum curator, laboratory technician, coordinator, etc.). The employee's credentials, including evidence of the skills and competencies stated in the job description and posting, will be collected by the employing district and sent to the State Certification Office along with a copy of the job description and the qualifications posted for the position. A determination regarding licensure will be made by the State Office of Certification. The state testing requirement for teacher licensure shall be met for this position.

2.2.3.1 A Standard Endorsement requires a Standard license as well as specific requirements defined under the individual licensure requirements.

2.3 Limited Standard License-Non-Renewable (Substandard): The Limited Standard license may be issued for a period of one (1) to six (6) years depending on circumstances defined below. The Limited Standard license carries no salary penalty and is non-renewable. This license shall not be issued at the request of an individual. It is issued to employees of a public school district or other state agency requiring certified educational personnel, upon the request of

the personnel designee of the organization, if the employee has not fully satisfied the requirements for a Standard license and one or more of the following conditions shall apply:

2.3.1 Limited Standard-Test (LS-T) Issued for a period not to exceed two (2) fiscal years to persons who have not, as yet, satisfied the State Board of Education testing requirement.

2.3.1.1 The local school district superintendent shall request that this license be issued to a new employee who has not been previously employed in a Delaware public school district, and who has not shown evidence of satisfactory performance on the PRAXIS I/PPST. The effective date for this non-renewable license shall be July 1 of the year in which the employment began and the expiration date shall be June 30 of the next, consecutive fiscal year.

2.3.2 Limited Standard Coursework (LS-C) Issued for a period of up to three (3) fiscal years to a public school employee who is lacking no more than twelve (12) graduate or undergraduate college level semester hours and who has successfully met all testing requirements. A Limited Standard Coursework license may be issued to:

2.3.2.1 An employee who meets all course requirements for a Standard license, but who has been out of college five (5) years or more. Six (6) semester hours of college level coursework will be required to be taken during the life of the Limited Standard license, or prior to the issuance of the Standard license (see 5.7), or

2.3.2.2 An employee who holds an expired Initial Standard, Standard or Professional Status license/certificate, but who has not taught on that license for at least three (3) years during the most recent five-year period (see 5.7). Six (6) semester hours of college level coursework will be required of such an applicant for renewal of the Standard license or an employee who meets the requirements for the Limited Standard;

2.3.2.3 An employee who is reassigned to continue for more than one (1) year in a partial assignment (see 2.6). At that point, the employee shall have three (3) years to complete all the specific requirements for licensure in the area of the partial assignment, regardless of the number of credits needed. Said employee shall hold a current, valid, Standard license in another, similar-related content area

2.3.3 Limited Standard Vocational (LS-V) May be issued for a period of up to six (6) years for employees who need more than sixty (60) semester hours of college level course work and who are required to satisfy the state's testing requirement within that six (6) year period.

2.3.4 Limited Standard-Shortage/Critical Need (LS-S) May be issued for up to three (3) years in areas of shortage designated annually by the State Department of Education. Requirements are established in accordance with areas of need by the State Office of Certification, as

approved by the Secretary and the State Board of Education. In this instance, the license may be issued to an employee who has at least a Bachelor's degree with a major in the subject area identified as being an area of critical shortage.

2.3.5 Limited Standard – Internship (LS-I) May be issued for a period of one (1) year for employees who meet all requirements for a Standard license other than student teaching or an internship requirement; and/or who have been accepted to participate in an approved Internship program; and/or are teaching through a special program. A Limited Standard Internship license may be issued to an employee who is:

2.3.5.1 An exchange teacher from a foreign country or a teacher in an exchange program between states or schools or institutions of higher education and/or state education agencies within the United States or

2.3.5.2 A teacher from a foreign country who holds a valid certificate/license from that country and a degree equivalent to a Bachelor's degree as defined in the United States; or

2.3.5.3 A person employed by a Delaware public school district who will have the first year of employment used in lieu of student teaching or who is in the process of serving one year of supervised experience in order to meet an experience requirement stated for a specific license. Either case requires the prior approval of the State Office of Certification (see 4.5).

2.3.6 A teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective for three years from 7/1/98 through 6/30/2000.

2.4 Temporary License – Non-Renewable: Issued at the request of a local district superintendent under emergency conditions to a person who is unable to meet the licensure requirements at the Standard or Limited Standard level. This license classification carries a reduction in salary and shall not be requested prior to August 15 of any year. The Temporary license is a one-year, non-renewable license. Salary for an employee issued a Temporary license in an academic area shall be 10% less than the salary for an employee issued a Standard license with the same experience and salary level. Salary for a Temporary licensed person in an area of Trade & Industry shall be reduced by \$400.00 from that of the Standard licensed person having the same experience and salary level. A Temporary license may be issued to an employee who meets one of the three situations listed below:

2.4.1 Academic (10% salary reduction)

2.4.1.1 A Non-degree employee for a regular

teaching position who is currently engaged in pursuing a Bachelor's degree and who has completed all professional education requirements including student teaching, but who lacks no more than six (6) semester hours of credits for completion of the Bachelor's degree requirements or;

2.4.1.2 A non-degree employee for a regular teaching position who has completed no less than two (2) years of college training and who has no less than three (3) years of successful teaching experience; or

2.4.1.3 An employee who is a graduate of a non-accredited college. No higher level license may be issued until the degree is validated (see 4.6.3).

2.4.2 A person whose credentials for any assignment do not meet Limited Standard licensure requirements. The 10% salary reduction will or will not be in effect as indicated below:

2.4.2.1 If the assignment in the area of Temporary licensure is a full daily schedule, then a 10% salary reduction is required.

2.4.2.2 If the assignment in the area of Temporary licensure is one-half or more of the full daily schedule, then a 10% salary reduction is required.

2.4.2.3 If the assignment in the area of Temporary licensure is less than half of the full daily schedule, and the individual has a Standard license in the primary area of assignment, then no reduction in salary is required

2.4.3 Trade and Industry (\$400.00 salary reduction): A non-degree employee for a Trade and Industry teaching position who has less than six (6) years of work experience or two (2) years beyond the learning period in the trade or industrial occupation to be taught.

2.4.4 Special Situations

2.4.4.1 May be issued to any employed person who fails to meet the requirements for renewal of a Professional Status certificate, a Standard license, or the requirements specified under the Limited Standard license, provided the local district superintendent or designee chooses to make a written request for the Temporary license. Salary reduction will be based on whether the employee holds an Academic or Trade and Industry position; or

2.4.4.2 at the written request of the local district superintendent or designee to an employee who fails to meet the coursework requirements specified for a Standard or Limited Standard license within the period specified by that license. Such request shall not be made when an employee fails to meet the testing requirement within the time specified by the Limited Standard Test; or

2.4.4.3 to an individual at the specific written request of the employing local district superintendent to the Secretary of Education of the Department of Education, upon providing appropriate documentation as specified in 3.5.1.2.1 and 3.5.1.2.2.

2.5 Failure to Meet Requirements

2.5.1 An employee who accepts employment in a public school district and is licensed below the level of a Standard license (Limited Standard or Temporary), by accepting the position agrees that any deficiencies will be completed within the specified period of that license. Such licenses are non-renewable. Consequently, if the specific requirements stated for Standard licensure are not met when the license expires, the individual is without licensure in Delaware and may be terminated by the local school district (see 2.4).

2.6 Teaching Assignment Out of Licensed Area

2.6.1 When a written request is received from the local Superintendent prior to reassignment, a partial teaching assignment of no more than two (2) classes or class periods may be authorized for one (1) school year, if the person assigned the partial meets the following requirements:

2.6.1.1 Holds a current, valid Delaware Standard teaching license in a field other than that in which the partial assignment is to be made; and has at least fifteen (15) semester hours in the content area of the partial assignment.

2.6.2 If it is necessary to continue the partial assignment past the initial year, regardless of the coursework deficiency, the individual shall be placed on a Limited Standard license in that area. During the three (3) year period of the Limited Standard, all requirements for the Standard license shall be met.

2.7 Permits: Permits are issued for specific positions within the local school districts that do not require either a Bachelor's degree or the Test approved for licensure by the Delaware State Board of Education. Individuals who hold permits are not considered "certified professional employees of the public school system" as that phrase is used in 19 Delaware Code, Chapter 1301.

2.7.1 Aide: A permit shall be required for all persons employed either full time or part time as school or classroom aides with local, state, federal or other funds.

2.7.2 Substitute Teacher (Delaware Code, Title 14, §1230).

2.7.2.1 Class A: May be issued to an applicant who holds, or is eligible to hold a valid Standard Delaware teacher's license or such a certificate/license that has expired. The PPST is not required to hold this classification.

2.7.2.2 Class B: May be issued to an applicant with or without a bachelor's degree who meets at least the requirements for a Temporary license (see 2.0).

2.7.2.3 Class C: May be issued to an applicant who is not eligible for either Class A or Class B Permit, but who is recommended to the Secretary of Education by the superintendent of a Delaware public school district.

2.7.2.4 Class D: May be issued to an applicant who is eligible for or holds a Class A, B, or C permit, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be

determined by the Board of Education of the employing school district.

2.8 Provisions for Exceptions and Changes

2.8.1 An exception to the existing licensure/certification regulations may be made by the Secretary of Education at the request of the local chief school officer; or in the case of an exception for the chief school officer, by the president of the local board.

2.8.2 An annual report stating the number and type of exception requests, as well as the disposition of each exception, shall be sent to the State Board of Education at the end of each fiscal year beginning with Fiscal Year 1997.

2.8.3 In the event of the consolidation of school districts where reassignment of a certified personnel is necessary, the following rules shall apply:

2.8.3.1 Personnel shall be considered certified for the position to which assigned and a certificate issued.

2.8.3.2 Such certificate or certificates shall be valid in the consolidated district for the duration of the reassignment or subsequent assignments resulting from consolidation.

2.9 Effect of Changes in Rules and Regulations Adopted 7/1/93

2.9.1 State of Delaware Approved Programs: An individual attending a college/university in the State of Delaware and currently enrolled in a program approved by the State of Delaware prior to July 1993 shall not be affected by any of the changes adopted July 1, 1993, as specified in the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same provided that he/she received the "Institutional Recommendation" of the college/university.

2.9.2 Evaluation for Licensure via Transcript Analysis: Individuals who have received a credential evaluation by transcript analysis that has resulted in evaluation/prescription letter(s) in their credential file at the Department of Education will have a period of time to complete the requirements stated in those respective letters, according to the following schedule:

2.9.2.1 All evaluation/prescription letters based on certification regulations adopted prior to the 1974 regulations shall become invalid on June 30, 1993. These individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for certification effective July 1, 1993.

2.9.2.2 All evaluation/prescription letters dated June 30, 1990 through June 30, 1993 shall become invalid on June 30, 1996. Effective July 1, 1996 these individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for licensure effective July 1, 1993.

2.9.3 Individuals Employed and Certified on

~~Substandard Certificates: An employee who has been issued a Delaware substandard certificate (Limited Standard, Provisional, Temporary) prior to July 1, 1993, shall continue on that certificate until the requirements specified are met or the certificate expires or the employee no longer occupies the position for which the certificate was issued. In that latter two cases, the employee shall be required to meet the July 1, 1993 regulations, if reassigned or re-employed at some later date, for a position requiring that same licensure.~~

3.0 Testing Requirements

~~3.1 Any applicant seeking initial licensure in Delaware shall provide the state Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics: The Pre-Professional Skills Tests (PPST) and/or The PRAXIS I Paper and Pencil Tests; and/or The PRAXIS I Computer Based Tests.~~

~~3.2 Test Scores. (Revised May 1994)~~

~~3.2.1 The following minimum passing scores are required in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills:~~

~~3.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93 Reading - 175, Mathematics - 175, Writing - 172 and/or~~

~~3.2.1.2 PRAXIS I - Paper and Pencil Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 175, Mathematics - 174, Writing 173 and/or~~

~~3.2.1.3 PRAXIS I - Computer Based Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 322, Mathematics - 319, Writing 319~~

~~3.3 Testing Exemptions include individuals holding Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/ PRAXIS I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 (see 2.6.2).~~

~~3.3.1 In addition, the following licenses and/or permits do not require the PPST/PRAXIS I:
Manager of School Food Service Program
Supervisor of School Food Service Program
Transportation Manager
Supervisor of School Bus Transportation
Administrative Support (formerly Secretarial Personnel)
Interpreter Tutor for Hearing Impaired
Permit Substitute Teacher
Permit Aides~~

~~3.4 Acceptable alternatives to the PRAXIS I test scores include:~~

~~3.4.1 Scores from the California Test of Basic Skills (CTBS) shall be in lieu of PPST/PRAXIS I scores~~

~~under the following conditions:~~

~~3.4.1.1 The scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and~~

~~3.4.1.2 The scores total 123, with at least 37 in each category; and.~~

~~3.4.1.3 Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/ PRAXIS I: Effective 7/1/97 - SAT Tests taken after 4/1/95 and presented for exemption must meet the score indicated due to a re-centering of the SAT.~~

~~3.4.1.4 Alternate Test And Score Praxis I Exemption~~

~~GRE Verbal 490 PRAXIS I Reading~~

~~SAT Verbal 480 PRAXIS I Reading~~

~~*SAT Verbal 560 PRAXIS I Reading
(After 4/1/95)~~

~~GRE Quantitative 540 PRAXIS I Mathematics~~

~~SAT Mathematics 520 PRAXIS I Mathematics
Mathematics~~

~~*SAT Mathematics 540 PRAXIS I Mathematics
(After 4/1/95)~~

~~NTE Core Battery:~~

~~Communications Skills 670 PRAXIS I Writing~~

3.5 Testing Timeline

~~3.5.1 Individuals may be hired in a Delaware public school district prior to having taken or passed the PPST/ PRAXIS I. The employee has the period of time, from the date of hire to the end of the next, consecutive fiscal year to present passing PPST/PRAXIS I scores to the employing school district and the State Office of Certification, should employment remain continuous.~~

~~3.5.1.1 Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline and scores should pre-date the employment date.~~

~~3.5.1.2 Once this period has expired, the individual will be without any valid Delaware license and employment may not be continued unless one of the following conditions is met:~~

~~3.5.1.2.1 Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRAXIS I OR~~

~~3.5.1.2.2 Based on documented effectiveness, the superintendent of a public school district may submit a written request to the Secretary of Education to grant a third/fourth year for an individual to successfully complete all parts of the PPST/PRAXIS I tests. The request shall include:~~

3.5.1.2.2.1 A letter from the individual's immediate supervisor attesting to the employee's effectiveness in the position; and copies of the employee's evaluations (Delaware Performance Appraisal System — 3 Formative and 1 Summative) from the current schoolyear, which demonstrate effective performance.

3.5.1.2.3 If the extension is granted, the individual shall:

3.5.1.2.3.1 Be placed on a one-year Temporary License at a ten (10) percent reduction in state salary; and

3.5.1.2.3.2 By October 31 complete training in all parts of the PPST/PRAXIS I for which qualifying scores have not been attained, by using the Learning Plus computer tutorial package or other available training programs.

3.5.1.2.3.3 By December 31 take the PPST/PRAXIS I at least once; and twice during the third/fourth year of employment.

3.5.1.2.3.4 By January 31 the district shall verify the above to the Department of Education.

3.5.1.3 In the event that employment is terminated from a Delaware public school district prior to passing the PPST/PRAXIS I and prior to the end of the next consecutive fiscal year, an individual may be re-hired and be granted the amount of time remaining on the original license, to meet the testing requirement. The total time the employee shall be employed, without demonstrating passing PPST/PRAXIS I scores, shall not exceed the amount of time from original date of hire to the end of the next, consecutive fiscal year, whether the employment remains continuous or not.

3.5.1.4 When employment is not involved, there is no time restriction for meeting the testing requirement; however, the test shall be taken prior to submitting an application for certification and the testing requirements may change.

3.5.2 PPST/PRAXIS I scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the test (see 3.3 and 3.3.1).

3.5.3 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.5.3.1 Passing scores in each area (Reading, Writing, Mathematics) may be attained in any testing format.

3.5.4 Presentation of Test Scores to the State Certification Office.

3.5.4.1 Test scores shall be official and Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Office of Certification.

3.5.4.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores that were sent to the individual may be accepted as official. The State Office of

Certification, shall determine whether the scores are acceptable as presented.

3.5.4.3 If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the State Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and re-testing is required as a means of providing official scores.

3.5.4.4 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described in 3.5.4.1, 3.5.4.2, and 3.5.4.3 have been exhausted.

3.5.4.5 Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores are:

3.5.4.5.1 Have scores sent directly from the Education Testing Service to the State Office of Certification.

3.5.4.5.2 Have an official college transcript forwarded directly to the State Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.

3.5.4.5.3 Have high school transcript signed and sealed by the registrar and sent directly to the State Office of Certification, for SAT verification.

3.6 It shall be the responsibility of the individual employee/applicant to bear any/all costs related to testing/re-testing, and the presentation of official scores to the State Office of Certification.

3.7 Department of Education Employees: All employees of the Department of Education hired after 7/94 shall pass PRAXIS I or provide equivalent scores from other acceptable assessments. These scores shall be presented to the State Office of Certification as official scores (see 3.5.4).

3.8 Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs.

3.8.1 The State Office of Certification shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State of Delaware approved program in education.

3.8.2 The request for such information shall be made directly to the Educational Testing Service or other testing vendor by the State Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.

4.0 Application for Initial License

4.1 An applicant for initial licensure shall file an

application with the State Office of Certification. The application shall be supported by official transcripts and other documentation that may be necessary to perform the credential evaluation. It shall be the responsibility of the applicant to provide the necessary documentation in an appropriate official form. Any and all costs related to providing appropriate documentation shall be the responsibility of the applicant.

4.2 Credentials for Application

4.2.1 All documentation to support an application request for licensure shall be official. Transcripts shall be signed and sealed by the college/university registrar. If presented in a sealed, unaltered envelope to the Office of Certification, transcripts stamped with "Issued to the Student" are considered official. The Office of Certification shall determine, solely, whether a transcript or other document is official.

4.2.2 All other documentation shall be originals, unless otherwise specified in the Application Packet.

4.2.3 Test scores shall be received directly from the Educational Testing Service; or be otherwise official (see 3.5.4).

4.2.4 Credentials required for application, if employed or non-employed, are the same, they shall include:

4.2.4.1 Application for Certification Form.

4.2.4.2 Official transcripts of all institutions listed on Application for Certification Form at the time of application for initial licensure.

4.2.4.3 Institutional Recommendation/Verification of Approved Program.

4.2.4.4 Official PPST/PRAXIS I scores. If not employed in a public school district at the time of initial application, official PPST/PRAXIS I scores are required to apply for an initial evaluation for licensure. Individuals who are employed in the Delaware public school system have a period of time to submit passing scores (see 3.5).

4.2.4.5 Non-resident processing fee (non-refundable), if applicable.

4.2.4.6 Experience verification, when applicable.

4.2.4.7 Copy of out-of-state certificates/licenses.

4.3 Receipt of Credentials for Persons Employed in the Delaware Public School System.

4.3.1 All credentials for licensure other than PPST/PRAXIS I scores (where applicable) should be received in the State Office of Certification, prior to employment. If this is not possible, then the credentials shall be received no later than two (2) months from the date of employment. Under these circumstances, it is the responsibility of the district, before employment, to determine that the person is eligible to be certified for the position.

4.3.2 If a complete credential file has not been received by the State Office of Certification, within two (2)

months of the employment date, the applicant shall be paid at the rate of a substitute teacher until required documentation for licensure has been received. Under extenuating circumstances, the district may make a written request for a waiver.

4.3.3 Upon receipt of the appropriate credentials and evaluation for license, the individual's salary level, based on verified degree, experience, military service, and type of license shall be determined, and shall be made retroactive to the date of employment.

4.4 Recency of Coursework

4.4.1 If an applicant's Bachelor's degree has not been conferred within the most recent five-year period; or if the applicant has not completed appropriate college-level coursework within the most recent five-year period from the date of evaluation for licensure or 3 years of full-time experience in the area of the license during the last 5 years, then six (6) semester hours of refresher coursework may be necessary, even if all other requirements are satisfied (see 5.7). Refresher coursework shall be taken in a regionally accredited college or university. All courses shall meet the approval of the Office of Certification. Inservice coursework is not appropriate to meet the recency requirement.

4.5 Student Teaching

4.5.1 Successful student teaching at the appropriate level under the supervision of an accredited teacher preparation institution shall be required for all standard licenses, with the exception of the process described below:

4.5.1.1 In lieu of student teaching, one (1) year of full-time, successful elementary, secondary school, or appropriate college/university sponsored internship training in Delaware, under supervision, and given prior approval by the State Office of Certification may be substituted. This regulation shall not be used until the individual has met all other requirements, leaving student teaching as the sole remaining requirement to be met for Standard licensure.

4.5.1.2 In lieu of student teaching, the six (6) semester hour student teaching requirement shall be met via a year of experience, as approved by the State Office of Certification, and six (6) additional elective semester hours in professional education in the area of licensure or any area designated by the employing school district and approved by the State Office of Certification.

4.5.1.2.1 The State Office of Certification must give prior approval to this year of experience. The one (1) year of experience shall be served at the same level or in the same content area as required for that license (K-4, elementary 1-8, secondary 7-12, Special Education, Math, English, etc.). Experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.2 Private school experience in lieu of student teaching shall be served in a regionally accredited/regularly organized private school. An appropriate

evaluation system, that is equivalent to the Delaware Performance Appraisal System, shall be in force in order for the private setting to qualify as an approved site. A private school is not required to participate in this process. It is voluntary and is a service to the applicant for Delaware licensure. Private school experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.3 An applicant who did not attain an undergraduate index sufficient for eligibility for student teaching at the appropriate level; or an applicant who, for some other reason, was denied permission by the college to engage in this experience; may not be certified to teach in Delaware until the restriction is removed by the college. This individual shall meet the Specific Requirements for the area of licensure sought, since the approved program recommendation is not available.

4.6 Other Considerations for Initial Licensure

4.6.1 Foreign Credentials

4.6.1.1 Applicants with study outside the United States who are not employed in the Delaware public school system should submit academic credentials either in the original or in legible certified reproductions. An analysis of the degree equivalency is required. The State Office of Certification has no staff trained in foreign credential analysis. For this reason, the individual shall submit credentials to an approved consulting firm specializing in foreign credential analysis/translation. An official translation/evaluation accompanying the original shall be required. The translation/evaluation will assist the Office of Certification in determining the applicant's licensure status. Semester hour equivalents and verification of certification/licensure as a teacher in the foreign country may also be necessary to complete the evaluation for licensure in Delaware. A list of appropriate foreign credential consultants is available from the State Office of Certification. Since this service is not provided by the Department of Education, the cost is the full responsibility of the applicant.

4.6.1.1.1 In making application for licensure, the individual with foreign credentials shall follow the standard procedure for all applicants; however, it is more efficient to submit transcripts for foreign credential analysis first. Any teaching experience claimed must be properly verified. If an applicant with foreign credentials is unable to provide all the required information, a license to teach in Delaware cannot be issued (see 2.0); and

4.6.1.1.2 Applicants who are part of a foreign exchange program should refer to 2.3.5.

4.6.2 Professions and Occupations License

4.6.2.1 In areas of licensure where a State of Delaware professional license or registration is required by law, the applicant must present a current, valid license or registration upon application for a teaching license. The

State license or registration shall be renewed as required by law. For initial licensure, a copy of a current, valid State of Delaware license shall be submitted with all requests for renewal of a Delaware license that requires the license.

4.6.2.1.1 At any time an individual allows the required license to lapse or become invalid for any reason, the Delaware teaching license which requires such professional licensure shall become invalid as well.

4.6.3 All graduate and undergraduate degrees and coursework accepted for licensure must be earned from a college or institution approved by the appropriate regional or national accrediting agency; however, applicants from non-accredited colleges may validate the Bachelor's degree by the completion of six (6) graduate level credits from an accredited institution or through the National Teacher Examinations (NTE) (see 4.6.5.1).

4.6.4 Correspondence coursework or courses delivered by video tape shall have a regionally accredited institution as the grantor of credit in order to meet requirements for licensure, and shall be presented to the Office of Certification on an official transcript from said regionally accredited institution. Six (6) semester hours of coursework is the maximum amount of credit allowable via correspondence (see 4.6.6).

4.6.5 Proficiency Examinations

4.6.5.1 A satisfactory score (fiftieth percentile or better) on the National Teacher Examinations (NTE)/PRAXIS II Content Tests may be used:

4.6.5.1.1 to validate work from non-accredited colleges (see 4.6.3 and 4.6.4);

4.6.5.1.2 to complete requirements for the major teaching field if the applicant holds a Bachelor's degree but lacks six (6) semester hours or less for full licensure and has at least one (1) year of successful teaching experience in the area required for the license;

4.6.5.1.3 as a substitute for coursework for an additional teaching field. This applies to a person who is fully certified and who has satisfactory experience in his/her major teaching field of at least three (3) years on the Standard license (documentation of both experience and level of performance required), and who wishes to qualify for another teaching field;

4.6.5.1.4 by an applicant who needs only refresher credits as required under Recency Requirement (see 5.7);

4.6.5.1.5 to complete requirements for foreign language in the areas of French, German and Spanish or any other specific content areas for which the National Teacher Exam (NTE/PRAXIS II) has been developed and for which the State of Delaware offers licensure;

4.6.5.1.6 to validate proficiency as a native speaker; or proficiency of a language gained through cross-cultural experiences such as living abroad.

4.6.5.2 Occupational Vocational Testing (NOCTI)

4.6.5.2.1 This test may be taken to complete requirements in the occupational vocational education area of Trade and Industry, with approval of the State Department of Education and they determine the appropriate cut scores of the NOCTI competency examinations for each trade area.

4.6.5.2.1.1 The appropriate NOCTI can be used for nine (9) semester hours of credit in the vocational elective area of the Specific Requirements of the Trade and Industry license and nine (9) semester hours toward a salary increment.

4.6.5.2.1.2 The NOCTI can be used as part of an undergraduate bachelor's degree program in vocational education. The degree-granting college/university will determine the credit value of the exam in light of the completion on the Bachelor's degree.

4.6.5.2.1.3 The NOCTI cannot be used for both 4.6.3.2.1.1 and 4.6.3.2.1.2 above.

4.6.6 Correspondence Coursework

4.6.6.1 Not more than six (6) semester hours of required courses for licensure in any single area may be secured by correspondence work. This correspondence work shall be successfully completed through an accredited college or in a school listed by a recommended accrediting agency such as the National Home Study Council.

4.6.6.1.1 Any courses presented in a video or distance learning format shall be considered as a correspondence course, as long as attendance on campus in a formal classroom setting is not required. Consequently, video courses and distance learning shall be taken through a regionally accredited college and a maximum of six (6) semester hours are allowable.

4.6.7 Fees Required

4.6.7.1 A \$10.00 non-resident initial processing fee will be charged for each original evaluation for licensure at the time of initial application. A resident of Delaware is an applicant who has been a resident of Delaware for at least one (1) year. Checks are to be made payable to the Delaware Department of Education, shall accompany each Application for Certificate, and are not refundable. Applications submitted without this fee shall be returned unprocessed.

4.6.7.2 A \$5.00 fee will be charged for each duplicate certificate/license. Checks are to be made payable to the Department of Education. Cash or postage stamps are not acceptable.

4.6.8 The effective date of each license shall be the actual date of issuance or employment, whichever is earlier; or the first of the month following the completion of the semester in which coursework requirements were completed or the date of completion of testing requirements when no other requirements were needed. The expiration date shall be the end of the fiscal year, as appropriate for the license being issued.

4.6.9 An applicant for initial licensure who meets all minimum requirements may, in some cases, be issued the appropriate license for only one (1) year when offered employment in a Delaware public school district. The license may be continued/extended for its full term after one (1) year of successful, full-time teaching experience in a public school setting and upon the recommendation of the local district superintendent.

4.7 Denial of License

4.7.1 A license may be denied to an applicant for initial licensure for the following reasons: lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.7.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

4.7.2.1 There is legal evidence that the applicant is not of good moral character; or

4.7.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

5.0 Renewal of Licenses

5.1 The Professional Status certificate is valid for five (5) fiscal years and shall be renewed upon expiration provided the employee shall have been employed, full-time, for at least three (3) school years during the aforesaid five-year term, in the type of position for which the certificate was issued.

5.1.1 In the event that the Professional Status certificate expires and the holder has not been employed full-time, for three (3) of the most recent five-year period, in the type of position for which the Professional Status certificate was issued, the employee shall be required to take refresher coursework as required in 5.7. Credits earned during the period when the certificate was valid may be applied, if appropriate, toward meeting the refresher requirements as long as the coursework is not older than five (5) years. Upon completion of the refresher coursework, a regular Standard license will be issued/renewed.

5.1.2 The holder of an expired Professional Status certificate, who does meet either the three-year employment requirement for renewal or the refresher requirements to qualify for a regular Standard license or renewal of such, may qualify for a Limited Standard license in the same area, if such certification is requested by a local district superintendent as a condition of employment or continued employment.

5.2 Standard license: The Standard license shall be renewed upon expiration, provided the employee shall have been employed in a Delaware public school district or other state agency requiring certified educational personnel, for at

least three (3) school years during the most recent five-year period. Said employment shall have been in the type of position for which the license was issued and for which it is valid.

5.2.1 The Standard license shall be renewed only when the employment is not for three (3) consecutive years, thus rendering the employee ineligible for a Professional Status certificate. If employment in the appropriate position is for three (3) consecutive years, the individual shall be issued the Professional Status certificate and the Standard license in that area shall not be renewed.

5.2.2 Standard licenses are typically not renewed for individuals employed outside the Delaware public school system and appropriate agencies that require certified educational personnel. The Standard license shall not be renewed for individuals employed within the Delaware public school system, unless it is required in the area to which the employee is currently assigned. Regular Standard licenses that are not renewed are valid indefinitely. Renewal of these licenses shall be made only when an assignment/reassignment within the public school system requires the employee to hold that specific license.

5.2.3 In the event of a reassignment to an area in which the Standard license has expired, and when the holder of that expired license has not been employed for three (3) of the most recent five-year period in a position for which it was issued, the holder shall be required to take the refresher coursework described in 5.7. Six (6) semester hour credits from regionally accredited colleges/universities earned during the period when the license was valid but expired may be applied, if appropriate, toward meeting the refresher requirement.

5.2.4 The regular Standard license may be renewed for personnel who previously held a Professional Status certificate, and who do not meet the three-year, full-time employment renewal requirement but who have completed the required refresher coursework. The Standard license shall be renewed at the time the Professional Status certificate expires, provided the holder is employed by a Delaware public school district or state agency requiring certified educational personnel, in a position requiring that license.

5.2.5 The holder of an expired license who meets neither the service requirements nor the refresher requirements for renewal, may qualify for a Limited Standard license, if employed by a Delaware public school district or state agency requiring certified educational personnel, provided such license is requested by a local district superintendent or appropriate personnel officer.

5.3 The Initial Standard certificate was valid for a period of five (5) years between October 1, 1982 and June 30, 1991 and is not renewable. The holder of an Initial Standard certificate who has been employed, full-time, by a Delaware public school district or state agency requiring certified

educational personnel for at least three (3) years of the aforesaid five-year term, and in the type of position for which the certificate was issued, shall be eligible for a regular Standard certificate upon expiration of the Initial Standard certificate. The Initial Standard certificate has not been issued since July 1, 1991. Since that time, the regular Standard certificate replaced the Initial Standard certificate as the initial certificate in Delaware. In the situation described above, the Standard certificate would be issued for the next consecutive five-year period.

5.3.1 After three (3) consecutive years of service in the type of position for which the Initial Standard certificate was issued, the holder of the Initial Standard is eligible for a Professional Status certificate in the same area. If employed in a Delaware public school district or an agency that requires certified educational personnel, a regular Standard certificate will not also be issued at that time. It may be issued later, as appropriate.

5.3.2 The holder of an expired Initial Standard certificate who has not completed, within the most recent five-year period, three (3) years of employment in the type of position for which the certificate was issued, may be issued a regular Standard license upon completion of six (6) semester hours of approved refresher work, independent of employment. A written request must be submitted if the individual is outside the Delaware public school system.

5.3.3 The holder of an expired Initial Standard certificate may be issued a Limited Standard license at the request of a local district superintendent/state agency, provided he/she is employed in a Delaware public school district or state agency requiring certified educational personnel, and in the event they meet neither the experience or the refresher requirements.

5.4 A Limited Standard license is issued for up to three (3) years at the request of a local district superintendent, and is not renewable (see 2.3).

5.5 A Temporary license is valid for one (1) year and is not renewable. If an applicant for licensure who was employed on the basis of a Temporary license later qualifies for a regular Standard then the appropriate license may be issued.

5.6 Individuals who are not employed in a Delaware Public School District or other State Agency Requiring Certified Educational Personnel:

5.6.1 A Professional Status certificate, issued to an individual while employed in a Delaware public school district, shall not be renewed. It is considered to be a valid Delaware license for an indefinite period of time.

5.6.1.1 Upon returning to employment within the Delaware public school system, the Standard license that was initially issued/used during the previous employment, shall be renewed when either 5.6.1.1.1 or 5.6.1.1.2 below can be met:

5.6.1.1.1 verification of the completion of

the appropriate refresher coursework as specified in 5.7.

5.6.1.1.2 provision of appropriate documentation of three (3) years full-time experience within the most recent five-year period, teaching in the same area as the Professional Status certificate.

5.6.1.2 Upon employment in a Delaware public school district, a Limited Standard license may be issued for a period of up to three (3) years at the request of a local district superintendent/designee while the refresher coursework requirement is being met.

5.6.2 The Standard license, although valid for an indefinite period of time, is typically not renewed for a five-year period until the individual holder is employed in a Delaware public school district or other state agency which employs certified educational personnel. At the time of employment within the public school system, and upon presentation of verification of appropriate refresher coursework (see 5.7):

5.6.2.1 If an individual with a valid regular Standard license that is more than five (5) years past its latest issuance date, seeks employment, he/she will be eligible for renewal with documentation of appropriate refresher coursework or experience. If coursework has not been taken, the regular Standard license cannot be renewed until such time as the refresher is taken. However, this individual shall be eligible at the request of the local district superintendent, to be issued a three-year Limited Standard license while the appropriate refresher coursework is completed.

5.7 Recency Requirement

5.7.1 Upon initial application for licensure, or when an additional area(s) of licensure is/are requested, or upon license renewal, at least six (6) semester hours of the coursework shall have been taken within the most recent five-year period. The recency requirement may be satisfied through appropriately documented employment in the area of license request, for three (3) years out of the most recent five-year period. Should neither of these criteria be met, six (6) semester hours of refresher coursework as specified below, shall be required prior to Standard licensure or renewal of license.

5.7.2 Refresher coursework for licensure shall be taken in a regionally accredited college or university. Said refresher may be either graduate or undergraduate level coursework, as was appropriate to meet the original requirements for licensure in that particular area. In-service coursework is not appropriate. A total of six (6) semester hours of refresher coursework is required for license renewal or to update any degree or coursework that is more than five (5) years old (see 4.4):

5.7.2.1 If required, the refresher coursework shall be related to the specific area of licensure requested, with three (3) semester hours to be taken in the subject/content area of the license and three (3) additional semester hours to be taken in professional education directly related to

the certified area. Refresher coursework shall meet the approval of the State Office of Certification. Refresher coursework shall be required for:

5.7.2.1.1 Renewing (upon employment in or assignment to a position) any valid, expired, renewable certificate/license where the individual has not been employed in an assigned position requiring that license for three (3) of the most recent five-year period;

5.7.2.1.2 Updating the recency of any degree or coursework that is older than five (5) years as it applies to the use of such coursework or the completion of a degree used to obtain initial licensure for a new area;

5.7.2.1.3 Updating the recency of any degree or coursework that is older than five (5) years as it applies toward meeting the requirements for any additional area(s) of licensure, after initial licensure.

6.0 Licensure Agreements/Reciprocity

6.1 Individuals graduating from Teacher education programs that are approved and accredited by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) Certification Reciprocity System or The Interstate Certification Project (ICP) and have full recommendation from their degree granting institution shall be accepted for full licensure in Delaware upon passing the reading, mathematics and writing parts of the Pre-Professional Skills Tests (PPST/PRAXIS I).

6.2 Interstate Certification Project (ICP)

6.2.1 Classroom Teacher: An applicant with a bachelor's degree granted after January 1, 1964 in teacher education whose program is on the list of approved programs for the ICP will be automatically certified to teach in Delaware in his/her major area if he/she is fully recommended for teaching by the degree-granting institution.

6.2.1.1 An applicant with a bachelor's degree who holds a valid initial regular certificate/license from one of the states in the ICP and who has at least 27 months of successful teaching experience within the immediate past seven (7) years with at least eighteen (18) months of that teaching under the license now offered, is eligible for a Delaware license in the same area. (A copy of the certificate/license and verification of experience is required.)

6.2.2 All other licensed education personnel (except Superintendents and Assistant Superintendents):

6.2.2.1 An applicant from one of the states in the ICP who holds a valid initial regular certificate/license from the state and who has a minimum of 27 months of successful performance of professional school services under the certificate/license is eligible for a Delaware license in the same area if he/she has attained the same degree level of education required by Delaware. A copy of the certificate/license and verification of experience is required.

~~6.2.3 Licensed Educational Personnel from Other States (except local District Superintendent)~~

~~6.2.3.1 An applicant with a bachelor's degree who is fully licensed/certified in another state and who has a minimum of three (3) years of satisfactory experience within the immediate past five (5) years in the specific teaching area covered by that certificate/license, will be licensed in that area if he/she meets the total number of credits required by Delaware in professional education and the specific field, but not necessarily the specific courses required in Delaware if he/she has attained the same degree level of education required by Delaware.~~

7.0 Revocation of Licenses/Certification

~~7.1 Any license other than that of Professional Status may be revoked by the Secretary of Education for the reasons of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials.~~

7.2 Revocation Requested by a School District

~~7.2.1 When any certified person is dismissed for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).~~

~~7.2.2 When any certified person is dismissed for misconduct in office, incompetence, disloyalty, or willful and persistent insubordination, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).~~

~~7.2.3 The certified copy of the decision of the board shall be substantial evidence for the Secretary of Education to revoke the license(s) without a hearing. The district shall forward its record with regard to the dismissal and any hearing thereon.~~

~~7.2.4 The notice of the revocation(s) by the Secretary of Education shall be sent to the person by certified mail and shall give notice that it may be appealed to the Delaware State Board of Education within thirty (30) days.~~

7.3 Revocation or Denial by the Secretary of Education

~~7.3.1 In a case where the Secretary of Education has good reason to believe that a certified person not employed by a public school district has been convicted of a crime which is evidence of immorality, the Secretary of Education may initiate proceedings to revoke the person's license(s).~~

~~7.3.2 Any revocation by the Secretary of Education, or any denial of licensure or denial of renewal of license shall be subject to the following:~~

~~7.3.2.1 The Secretary of Education shall ensure that there has been a fair investigation of the facts, that there is substantial evidence for the basis of the decision, and that~~

~~the person is given notice of the decision and the reasons.~~

~~7.3.2.2 The notice of the decision shall be sent to the person by certified mail, and the person shall have thirty (30) days, from receipt, to request an informal hearing before the State.~~

~~7.3.2.3 If such a hearing is requested, the Secretary of Education shall give the person twenty (20) days prior notice of the date, time and place of the informal hearing. The notice shall inform the person of the right to present his position and to be represented by counsel.~~

~~7.3.2.4 The Secretary of Education shall render a decision in writing, setting out the reasons within twenty (20) days. The decision shall be sent to the person by certified mail, and shall give notice that it may be appealed to the State Board of Education within thirty (30) days of receipt.~~

~~7.3.3 All appeals to the State Board of Education regarding revocation or denial of licensure are pursuant to 29 Del. C., Chapter 101.~~

8.0 Denial of Licenses/Certificates

~~8.1 A license may be denied to an applicant for initial licensure for the following reasons: Lack of Good Moral Character, Misconduct in Office, Incompetence, Willful Neglect of Duty, Disloyalty or Falsification of Credentials.~~

~~8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:~~

~~8.2.1 There is legal evidence that the applicant is not of good moral character; or~~

~~8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.~~

9.0 Professional Growth Programs

9.1 Definitions of Terms

~~9.1.1 Graduate Level Course: Any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.~~

~~9.1.2 Undergraduate Course: Any course to be used herein which is offered by a regionally accredited college or university which carried college credit for an Associate or Bachelor's degree.~~

~~9.1.3 In-service Credits: Any project course offered by a local Delaware school district or other agency that has the approval of the Delaware State Department of Education; or any course offered by the Delaware State Department of Education. (To be used in a Professional Growth Program, completion of these courses must have the prior approval of the local employing school district superintendent.)~~

~~9.1.4 Individual Professional Growth Credits:~~

Individual activities, i.e. projects, travel, and work experience, which contribute to the professional growth of the school employee in his/her assignment. Individual Professional Growth credits must have the prior approval of the Delaware State Department of Education and the local employing school district superintendent. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

9.1.4.1 A minimum of one (1) and a maximum of three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) Individual Professional Growth credits.

9.1.5 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for Professional Growth activities will be calculated in the same manner as in-service credits.

9.2 Acceptable Grades

9.2.1 All grades for college-level credit submitted for a Professional Growth Program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

9.3 Acceptable Credits

9.3.1 Credits for the Professional Growth Programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

9.3.2 Up to nine (9) Individual Professional Growth credits may be counted from the B+15 through the M+45.

9.3.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

9.3.4 Undergraduate, in-service, and Individual Professional Growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

9.3.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience, 14 Del. C., § 1301.

9.4 Salary Increment: An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

9.5 Admittance to Graduate School: Applicants for a

Professional Growth Program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

9.6 Acceptable Professional Degrees

9.6.1 Professional degrees earned in areas other than professional education will not be accepted for the Professional Growth Program unless the degree is directly related to an area of specialty in which the individual is employed.

9.6.2 To be counted for the Professional Growth Program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

9.6.3 Individual courses in any area may be considered for acceptance in the Professional Growth Program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

9.7 Usable Credits: All credits and programs to be accepted for the Professional Growth Program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

9.8 Excess Graduate Level Credits: Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 Professional Growth Programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 Professional Growth Program.

9.9 Effective Date of Salary Adjustment

9.9.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the State Office of Certification. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

9.9.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

9.10 Appeals Committee: A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant; One (1) staff member from the Department of Education; and one (1) representative from the Chief School Officers organization.

9.11 Application Procedures

9.11.1 The applicant shall secure the proper form

from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the State Office of Certification.

9.11.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the Professional Growth Program.

9.11.3 Application for evaluation shall not be submitted prior to the completion of the Professional Growth Program.

9.11.4 A salary increment for the current fiscal year (July 1 – June 30) based upon approval of the application must be received in the State Office of Certification by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after this date will be approved effective the first day in the new fiscal year. No salary credit shall be retroactive into a prior fiscal year.

10.0 Certification/National Board of Professional Teaching Standards

10.1 To be eligible to apply for national board certification (and, therefore, for the award) an individual shall:

10.1.1 Hold a baccalaureate degree from a regionally-accredited institution of higher education.

10.1.2 Verify the completion of at least three years of successful, full-time experience teaching in one or more elementary, middle-level, and/or secondary schools. Substitute teaching does not count for this experience.

10.1.3 Be currently employed in a Delaware public school.

10.2 Application Procedures

10.2.1 By a date prescribed each year, teachers interested in applying for national certification shall request, complete, and return an Award Application to the State Office of Certification. If more than fifteen (15) applications are received in any given year, a total of fifteen applicants to receive the awards will be chosen by lottery.

10.2.2 The applicant shall complete the forms and return them to the State Office of Certification by the annual deadline for processing and submission to the National Board. The application for national board certification shall be completed in full and returned before the individual can obtain the award specified in this policy.

10.2.3 The application for national board certification and the \$500.00 initial application fee shall be sent from the State Office of Certification directly to the National Board for Professional Teaching Standards.

10.2.4 As bills are sent to the teacher by the NBPTS for additional application fees and related costs up to a total of \$2,000.00, the teacher will forward the bills to the Office of Professional Standards and Certification for payment to

the National Board.

10.2.5 A teacher may receive an award only one time for working toward national certification in a particular field/level.

10.2.6 Should a teacher/applicant be involved in another national board certification program like the Princeton Project, which also pays part of the fees for the national certification, this program will pay the other part of the fees and related costs up to the total of \$2,000.00 for all support.

10.2.7 The Documents that shall be submitted to complete the application and reporting process include the Award Application and the NBPTS Application.

10.3 Salary Adjustment: School district personnel offices shall verify for the State Office of Certification completion of national board certification by any teacher paid under 14 Del.C. §1305.

11.0 Alternative Routes To Certification Program For Secondary Teachers

11.1 Eligibility for Participation in Program is defined in 14 Del.C. §1260.

11.2 Candidates employed for secondary teaching positions who do not meet the certification requirements for a limited standard or standard Delaware certificate and who do not meet the criteria will be issued a one-year temporary certificate and will be required to meet the Delaware certification requirements for the area in which they are teaching.

11.3 School districts or charter schools employing a secondary-level candidate for the alternative routes program must meet the criteria set forth in 14 Del.C. §1260.

11.4 The Alternative Routes to Certification Program shall be offered in three interrelated but distinct components — a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and immediately following the first year of teaching.

11.4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or Charter School, instructional strategies and classroom management and adolescent development.

11.4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

11.4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and

continuing for a period of thirty (30) weeks.

11.4.3 Seminars on Teaching that provide alternative routes to certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

11.4.4 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) (3) of 14 Del. C.

11.4.5 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

11.5 Program Evaluation: Those responsible for alternative routes to certification programs approved by the State Office of Certification shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

1505 Professional Growth Programs (Effective through 6/30/03 only)

1.0 Content: This regulation shall apply to professional growth programs for educators, pursuant to 14 Del. C. § 1305.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“Graduate level course” means any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.

“Individual professional growth credits” means individual activities (i.e., projects, travel, and work experience) which contribute to the professional growth of the school employee in his/her assignment.

“In-service credit” means credit offered by school districts, charter schools, Delaware educationally related organizations, the Department, or individual professional growth programs and approved by the state in-service committee.

3.0 Credits.

3.1 Three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) individual professional growth credits. Individual professional growth credits must have the prior approval of the Department and the local employing school district superintendent or charter school principal. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

3.2 Credit Calculation.

3.2.1 All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for professional growth activities will be calculated in the same manner as in-service credits.

3.3 Acceptable Grades

3.3.1 All grades for college-level credit submitted for a professional growth program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

3.4 Acceptable Credits

3.4.1 Credits for the professional growth programs

(B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

3.4.2 Up to nine (9) individual professional growth credits may be counted from the B+15 through the M+45.

3.4.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

3.4.4 Undergraduate, in-service, and individual professional growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

3.4.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience (14 Del. C., § 1301).

3.5 Salary Increment.

3.5.1 An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

3.6 Admittance to Graduate School: Applicants for a professional growth program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

3.7 Acceptable Professional Degrees

3.7.1 Professional degrees earned in areas other than professional education will not be accepted for the professional growth program unless the degree is directly related to an area of specialty in which the individual is employed.

3.7.2 To be counted for the professional growth program, a degree for any individual involved in instruction,

curriculum, or the supervision of instruction must be a degree in professional education.

3.7.3 Individual courses in any area may be considered for acceptance in the professional growth program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

3.8 Usable Credits.

3.8.1 All credits and programs to be accepted for the professional growth program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

3.9 Excess Graduate Level Credits.

3.9.1 Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 professional growth programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 professional growth program.

3.10 Effective Date of Salary Adjustment

3.10.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

3.10.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

3.11 Appeals Committee.

3.11.1 A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant, One (1) staff member from the Department; and one (1) representative from the Chief School Officers organization.

3.12 Application Procedures

3.12.1 The applicant shall secure the proper form from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the Office of Professional Accountability.

3.12.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the professional growth program.

3.12.3 Application for evaluation shall not be submitted prior to the completion of the professional growth program.

3.13 A salary increment for fiscal year 2004 (July 1 - June 30) based upon approval of the application must be received in the Office of Professional Accountability by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. No salary credit shall be retroactive into a prior fiscal year.

1510 Issuance Of Initial License Issuance Of Initial License

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del. C. § 1210.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Alternative Routes to Licensure and Certification" means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

"Composite score" means a total of an applicant's scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests.

"Date of hire" means the effective date of employment by a school district, charter school, or other employing authority.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

"Examination of general knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

"Exigent circumstances" means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

"Jurisdiction" means a state, territory or country.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Mentoring” means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

“Novice applicant” means an applicant who has not previously held an initial license in Delaware.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del. C. § 104.

“Student teaching program” means a program accredited by the National Association of State Directors of Teacher Education and Certification or the National Council for the Accreditation of Teacher Education, which includes traditional student teaching programs, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment.

3.0 In accordance with 14 Del. C. § 1210, the Department shall issue an initial license to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment, or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. For the purposes of this regulation, a bachelor’s degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or category. (See 14 DE Admin. Code 1516).

3.1 An applicant for an initial license shall submit the

application form, official transcripts, and official scores on an examination of general knowledge to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (Tests taken on 10/23/93 and thereafter): reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on

the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass PRAXIS I or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. An initial license issued without the passage of PRAXIS I shall be suspended at the end of the fiscal year during which the license was issued if proof of passage of PRAXIS I has not been provided. This suspension shall remain in effect until the license holder passes PRAXIS I or until the initial license expires, whichever first occurs. Notwithstanding the foregoing, the superintendent of the employing school district or charter school may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.1 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.

3.2.6.2 An applicant in a vocational trade and industry area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent

directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which shall expire on the last day of the month of issuance six (6) years later.

4.2 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

6.1 A license holder whose license expires during the school year may have the initial license extended until the last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstances and shall not exceed one (1) year in length.

7.0 An educator may take a leave of absence of up to three

(3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 Del. Code, § 1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of an evaluation or prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness of documented by the local school district, charter school, or other employing authority.

1513 Denial Of Licenses

1.0 Content: This regulation shall apply to the denial of an initial license, continuing license and/or advanced license for educators pursuant to 14 Del. C. § 1217.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.

“Advanced license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and § 1214.

“Department” means the Delaware Department of Education.

“Continuing license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1211 and §1212.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter

12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

“Good moral character” means conduct which is consistent with the rules and principles of morality expected of an educator.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

“Initial license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Secretary” means the Secretary of the Delaware Department of Education.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

“State” means the State of Delaware.

“Unfit” means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials.

3.0 Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth in 14 DE Admin. Code 1510, 1511, and 1512.

3.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days.

3.2 An applicant who is denied an initial, continuing, or advanced license may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

4.0 Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.1 There is legal evidence that the applicant is not of good moral character; or

4.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

1514 Revocation Of Licenses

1.0 Content: This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license

for educators, pursuant to 14 Del. C. § 1218.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Advanced license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and 1214.

“Continuing license” means a license issued as part of the three-tiered license system set forth in 14 Del. C. § 1211 and 1212.

“Department” means the Delaware Department of Education.

“Dismissal” means (1) dismissal by a school board or board of directors where the license holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license holder’s conviction of a crime which is evidence of immorality.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

“Initial license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“License holder” or “licensee” means any individual who holds an initial license, continuing license and/or advanced license, and until a continuing license is issued, a limited standard, standard, or professional status certificate.

“Secretary” means the Secretary of the Delaware Department of Education.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

“State” means the State of Delaware.

3.0 An initial, continuing or advanced license may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license holder made a materially false or misleading statement in his or her license application.

3.1 Revocation Requested by a School District or Charter School.

3.1.1 When any license holder is dismissed by a school board, or board of directors, or other employing authority for immorality, the board making such a

determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.2 When any license holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.3 When a license holder employed by a school board or board of directors or other employing authority voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, or other employing authority, the board shall, upon accepting the resignation, give written notice to the Secretary.

3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

3.2 Revocation by the Secretary of Education

3.2.1 The Secretary may initiate proceedings to revoke a license holder’s license when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license holder who is not employed by a public school district or charter school or other employing authority has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

4.0 Duty of License Holder to Report.

4.1 Notwithstanding any other provisions stated herein, a license holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license holder is dismissed by a school board, board of directors, or other employing authority for immorality;

4.1.2 The license holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for immorality;

4.1.3 The license holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.

4.2 The failure of the license holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license.

5.0 When a license is revoked, all certificates held by the license holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

1515 Emergency Certificate

1.0 Content: This regulation shall apply to the issuance of an emergency certificate, pursuant to 14 Del. C. § 1221.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Certified" means holding a certificate in a specific content area at designated grade levels.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. §1203, but does not include substitute teachers.

"Emergency certificate" means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge

to meet certification requirements in a specific content area.

"Employing district" means a school district, charter school, or other employing authority that proposes to employ an educator under an emergency certificate.

"Exigent circumstances" means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.
"Satisfactory evaluation" means an overall rating of "basic" or higher on an annual DPAS summative evaluation.

"Standard certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 Upon request from the employing district, the Department may issue an emergency certificate, valid for up to three years, to an educator who holds a valid Delaware initial, continuing, or advanced license, or a valid standard or professional status certificate, but who is not eligible for certification in the area of need. An emergency certificate may not be renewed. Notwithstanding the foregoing, an emergency certificate issued to an educator in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

3.1 In its request for the issuance of an emergency certificate, the employing district must:

3.1.1 Document its efforts to hire a certified educator by supplying the Department with copies of job postings, recruitment efforts, and advertisements.

3.1.2 Establish that the proposed recipient of an emergency certificate is competent by submitting evidence of the educator's license and other considerations, which may include, but are not limited to, evidence of course work or work experience in the area for which the emergency certificate is requested, which the employing district applied in determining the proposed recipient's competence.

3.1.3 Set forth a written plan to support and assist the proposed recipient in achieving the skills and knowledge necessary to meet the applicable certification requirements.

3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above will result in denial of the emergency certificate.

3.3 The emergency certificate shall be in effect for three (3) years from the month in which the applicant is employed until the last day of the month of issuance three (3) years later, except in the case of an emergency certificate issued to a vocational trades and industry teacher, which shall expire on the last day of the month of issuance six (6)

years later.

3.3.1 A certificate holder whose emergency certificate expires during the school year may have the emergency certificate extended until the last day of the fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

4.0 At the end of each school year during which an emergency certificate is in effect, the employing district shall file a status report with the Department, which shall:

4.1 Establish that the recipient of the emergency certificate has demonstrated competence through receiving a satisfactory evaluation on the Delaware Performance Appraisal System.

4.2 Document the progress made by the recipient of the emergency certificate toward fulfilling the plan established by the employing district to meet the applicable certification requirements.

4.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above will result in suspension of the emergency certificate. A suspension may be lifted upon fulfillment by the employing district of the conditions set forth in 4.1 and 4.2 above.

5.0 Prior to the expiration of an emergency certificate, the recipient must meet the requirements for issuance of a standard certificate (See 14 DE Admin. Code 1516).

6.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for an emergency certificate on an individual basis and grant an emergency certificate to an applicant who otherwise does not meet the requirements for an emergency certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

7.0 An emergency certificate shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearings Procedures and Rules.

1516 Standard Certificate

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless

the context clearly indicates otherwise:

○—%□R□L €7/8€5%□ means holding a certificate in a specific content area at designated grade levels.

○—%□R□L €7/8€1/81/8□L €1—○ means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

□Department□ means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

"Examination of content knowledge" means a standardized test which measures knowledge in an specific content area.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

"State Board" means the State Board of Education of the State pursuant to 14 Del. C. § 104.

3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing, or advanced license or limited standard, standard, or professional status certificate who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students, or has graduated from a Delaware approved program, or holds a valid and current certificate in the area requested from another state. Educators may hold certificates in more than one area.

3.1 An educator may document the acquisition of the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Submitting evidence of having graduated from a Delaware approved educator preparation program; or

3.1.2 Holding a valid and current certificate from another state; or

3.1.3 Achieving a passing score on an examination of content knowledge, such as PRAXIS II. This section is subject to the establishment of passing scores for PRAXIS II examinations by the Department, and their approval by the Professional Standards Board, with concurrence from the State Board of Education.

3.1.3.1 National Board for Professional

Teaching Standards in the area, subject, or category in which the standard certificate is to be issued will be accepted in lieu of a passing score on PRAXIS II.

3.1.3.2 In areas, subjects or categories where an examination of content knowledge is neither available nor applicable, the applicant must meet the requirements set forth in the relevant Department regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought.

4.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the PRAXIS II examination or a notarized copy of the National Board for Professional Teaching Standards Certificate. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

5.0 If an applicant holds a valid initial, continuing, or advanced Delaware license or a limited standard, standard or professional status certificate and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

6.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate. The Department shall also recognize a limited standard or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard certificate.

7.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

8.0 The Secretary of Education may, upon the written

request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

1519 Alternative Routes to Teacher Licensure and Certification Program

1.0 Content: This regulation shall apply to the alternative routes to licensure and certification program, pursuant to 14 Del. C. §§ 1260 through 1264.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

"Emergency certificate" means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

"Examination of general knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

"Initial license" means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

"Secretary" means the Secretary of the Delaware Department of Education.

"Standard certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

"State Board" means the State Board of Education of the State pursuant to 14 Del. C. § 104.

3.0 Candidates seeking participation in the alternative routes for teacher licensure and certification program shall be issued an initial license and a standard or emergency certificate or certificates of no more than three years duration. Candidates must:

3.1 hold a bachelor's degree from a regionally accredited college or university in a major appropriate to the instructional field they desire to teach;

3.2 pass an examination of general knowledge, such as PRAXIS I, or provide an acceptable alternative to the PRAXIS I test scores, as set forth in DE. Admin. Code 1510;

3.3 obtain an acceptable health clearance and an acceptable criminal background check clearance; and

3.4 obtain and accept an offer of employment in a position that requires licensure and certification.

4.0 The Alternative Routes to Teacher Licensure and Certification Program shall consist of three interrelated but distinct components - a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and, immediately following, the first year of teaching.

4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.

4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

4.3 Seminars on teaching that provide alternative routes to licensure and certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

5.0 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) and (3) of 14 Del. C.

6.0 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

7.0 Program Evaluation: Those responsible for alternative routes to certification programs approved by the Standards Board and the State Board shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

8.0 The Secretary may implement other alternative routes to teacher licensure and certification programs, provided the programs meet the minimum criteria set forth in this regulation.

1520 Substitute Teacher – RESERVED

Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)

302 Certification Administrative– Superintendent

304 Certification Administrative – Assistant Superintendent for Curriculum

311 Certification Administrative – Elementary School Principal or Assistant Principal

312 Certification Administrative – Secondary School Principal or Assistant Principal

313 Certification Administrative – Principal of a School for Children with Disabilities

1530 Certification Administrative - School Principal

1531 Certification Administrative – School Leader I

1532 Certification Administrative – School Leader II

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend the following regulations:

- 302 Certification Administrative – Superintendent
- 304 Certification Administrative – Assistant Superintendent for Curriculum
- 311 Certification Administrative – Elementary School Principal or Assistant Principal
- 312 Certification Administrative – Secondary School Principal or Assistant Principal
- 313 Certification Administrative – Principal of a School for Children with Disabilities
- 1535 Certification Administrative – Administrative Assistant
- 1536 Certification Administrative – Director
- 1538 Certification Administrative – Supervisor

It is necessary to amend these regulations in order to comply with changes in statute regarding the licensure and certification of educators. Further, by amending these regulations, the number of regulations will be reduced from eight to three, thereby furthering the goal of reducing the number and complexity of regulations. These regulations

were previously published in the October, 2002, Register of Regulations. Comments received during the public comment period of the previous publication of these regulations have been addressed. Principal of an adult education program has been removed. These regulations address only pK-12 schools and do not address adult education programs. Concerns about special qualifications for principals of schools for exceptional children have also been addressed. These regulations were republished in the April, 2003, Register of Regulations. Comment received during the public comment period led to changes in the regulation which requires that they be re-published. Changes include the addition of a definition of teaching experience and deletion of the word "classroom". The revised regulations have also been renumbered to reflect their movement to the Professional Standards Board section of the Department regulations.

Regulations 311 Certification Administrative – Elementary School Principal or Assistant Principal, 312 Certification Administrative – Secondary School Principal or Assistant Principal, and 313 Certification Administrative – Principal of a School for Children with Disabilities will be amended by deleting them in their entirety and replacing them with regulation 1530 Certification Administrative – School Principal. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware.

Regulations 1535 Certification Administrative – Administrative Assistant, 1536 Certification Administrative – Director, and 1538 Certification Administrative – Supervisor will be amended by deleting them in their entirety and replacing them with regulation 1531 Certification Administrative – School Leader I. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded skill and knowledge required at a broader level than the school building level.

Regulations 302 Certification Administrative – Superintendent and 304 Certification Administrative – Assistant Superintendent for Curriculum will be amended by deleting them in their entirety and replacing them with regulation 1532 Certification Administrative – School Leader II. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders.

The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded and deeper skill and knowledge required to exercise leadership as a chief school officer or assistant.

C. Impact Criteria

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulations address student achievement by educational leaders support and lead Delaware educators and establish and sustain positive environments which encourage high student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all school administrators hired to lead buildings or districts meet high standards for certification.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected? The amended regulations address educator certification. Regulations concerning high standards and appropriate credentials and training for school leaders help to ensure that all students' health and safety are adequately protected.

4. Will the amended regulations help to ensure that all students' legal rights are respected? The amended regulations address school leader certification, not students' legal rights. Appropriate credentials and training for school leaders will help to ensure that all students' legal rights are respected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level. By reducing the number and complexity of the regulations, decision makers at the local board and school level will have greater authority and flexibility.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulations be consistent with,

and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulations will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended and new regulations? There is no additional cost to local school boards for compliance with the regulations.

~~311 Certification Administrative Elementary School Principal Or Assistant Principal~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing any combination of grades K-8 designated as an elementary school, and is valid for a principal of a middle level school:

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience at the elementary level or two years of elementary classroom teaching experience, as specified, and a one-year internship in Administration at the elementary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with an approved program in Elementary School Administration and;

1.3.2 A minimum of three semester hours in each of the following areas:

1.3.2.1 Child Development

1.3.2.2 Methods of Teaching Reading at the elementary level

1.3.2.3 Methods of Teaching Mathematics at the elementary level or;

1.3.3 Completion of any graduate program in Elementary School Administration and;

1.3.4 A minimum of three semester hours in each of the following areas:

1.3.4.1 Child Development

1.3.4.2 Methods of Teaching Reading at the elementary level

1.3.4.3 Methods of Teaching Mathematics at the elementary level or;

1.3.5 A Master's degree in any field and;

1.3.6 A three semester hour graduate level course in each of the following areas:

1.3.6.1 Elementary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations and

1.3.7 A minimum of three semester hours in each of the following areas:

1.3.7.1 Child Development

1.3.7.2 Methods of Teaching Reading at elementary level

1.3.7.3 Methods of Teaching Mathematics at elementary level

(The requirements specified in 1.3.1 and 1.3.2 and 1.3.3. may be met by previously taken undergraduate coursework or through undergraduate or graduate level coursework taken specifically to meet these requirements.)

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0:

2.2 Master's degree from a regionally accredited college and;

2.3 Meets requirements listed in 1.2 and;

2.4 Within six semester hours of the coursework specified in 1.3.2 or 1.3.4 or 1.3.6 and 1.3.7.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

~~312 Certification Administrative Secondary School Principal Or Assistant Principal~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing grades 7-12 designated as a junior high school, high school, vocational high school or a senior high school. Valid for a principal of a middle level school.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Minimum of three years successful;

full-time classroom teaching experience at the secondary level or two years of successful, full-time secondary classroom teaching experience and a one year internship in School Administration at the secondary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from an accredited college in an approved program for Secondary School Administration; and

1.3.2 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.3 Completion of a graduate program in Secondary School Administration and;

1.3.4 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.5 A Master's degree in any field and;

1.3.6 A three semester hour graduate level course in each of the following areas

1.3.6.1 Secondary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations

1.3.6.7 Three semester hours Adolescent Development, taken at the graduate or undergraduate level.

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as in 1.0.

2.1.1 Master's degree from a regionally accredited college and;

2.1.2 Meets the requirements in 1.2 and;

2.1.3 Within six semester hours of the completion of the coursework in 1.3.6.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

~~313 Certification Administrative Principal Of A School For Children With Disabilities~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for a principal of a school for children with disabilities.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Three years of full-time, successful classroom experience as a teacher of children with disabilities, while holding a Standard License to teach children with disabilities. Standard certification is limited to these areas of special education: LD, SED, MD, VI, HI, PI, Autistic/Severely Disabled and combinations thereof and;

1.3 Specialized Professional Preparation

1.3.1 A Master's degree in any field from a regionally accredited college; and

1.3.2 The individual shall meet the State of Delaware's requirement for Standard certification as an Elementary or Secondary School Principal; and

1.3.3 The individual shall hold, or be eligible to hold a Standard License as a teacher of exceptional children LD, SED, MD, VI, HI, PI, Autistic or Severely Disabled and combinations thereof.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets all requirements in 1.1, 1.2, 1.3.1 and;

2.1.2 Within six semester hours of meeting the requirement in 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1530 Certification Administrative - School Principal/ Assistant Principal

1.0 This regulation shall apply to the issuance of a standard certificate for school principal and assistant principal, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

"Standard certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"State Board" means the State Board of Education of the State of Delaware established pursuant to 14 Del. C. § 104.

"Teaching experience" means meeting students on a regularly scheduled basis, planning and delivering

instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for the principal or assistant principal of an elementary or intermediate school, a middle school, a high school, or a school for exceptional students.

3.1 Educational requirements

3.1.1 A master's degree in educational leadership from a regionally accredited college, or

3.1.2 A master's degree in education from a regionally accredited college and a current and valid principal or assistant principal certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements.

3.1.3.1 A three semester hour graduate level course in each of the following areas: School Administration (at the level to be initially assigned), Supervision/ Evaluation of Staff, Curriculum Development, School Business Management, School Law/Legal Issues in Education, Human Relations, and, if not taken at the undergraduate level, Child/Adolescent/Human Development.

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the level to be initially assigned as a school principal or assistant principal, except at the middle level, where the teaching experience may be at any pK-12 level, or as a principal or assistant principal of a school for exceptional students, where the teaching experience must have been with one or more of the categories of exceptional children served by the school.

~~1535 Certification Administrative – Administrative Assistant~~

Effective October 11, 2001

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, and;

1.3 Specialized Professional Preparation

1.3.1 Specific training or satisfactory experience

including an internship and/or fieldwork in the area in which employed.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree from an accredited college and;

2.1.1.1 Meets the requirements of 1.2 and;

2.1.1.2 Within six semester hours of meeting the requirements as specified in 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

See 5 DE Reg. 856 (10/1/01)

~~1536 Certification Administrative – Director~~

Effective October 11, 2001

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas:

1.1 Degree required

1.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience or;

1.2.2 A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or;

1.3 Specialized Professional Preparation

1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or;

1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a regionally accredited college(s) to include the following graduate level coursework:

1.3.2.1 A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and;

1.3.2.2 A minimum of twenty-one semester hours of graduate level coursework in the area of

administration, to include at least one course in each of the following areas:

- Instruction
 - ~~1.3.2.2.1 Curriculum Development and~~
 - ~~1.3.2.2.2 Supervision/Evaluation of Staff~~
 - ~~1.3.2.2.3 School Business Management~~
 - ~~1.3.2.2.4 School Law/Legal Issues in~~
- Education
 - ~~1.3.2.2.5 Human Resource Management~~
 - ~~1.3.2.2.6 Human Development (to include child/adolescent development)~~
 - ~~1.3.2.2.7 Organizational Management~~

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and~~

~~2.1.2 Meets all experience requirements in 1.2 and~~

~~2.1.3 Meets the Specialized Professional Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative coursework in 1.3.2.1.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~See 5 DE Reg. 856 (10/1/01)~~

~~1538 Certification Administrative Supervisor~~

~~Effective October 11, 2001~~

~~1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas:~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision~~

~~and Curriculum and;~~

~~1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or;~~

~~1.3.3 A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:~~

~~1.3.3.1 A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and;~~

~~1.3.3.2 A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:~~

~~1.3.3.2.1 Human Relations~~

~~1.3.3.2.2 School Law/Legal Issues~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.~~

~~2.1.1 Master's degree from a regionally accredited college; and~~

~~2.1.2 Meets all requirements in 1.2.~~

~~2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework requirements in 1.3.3.1 and 1.3.3.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~See 5 DE Reg. 856 (10/1/01)~~

1531 Certification Administrative - School Leader I

1.0 The following shall apply to the issuance of a standard certificate for directors, supervisors, administrative assistants, coordinators, and managers in instructional areas, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

"Standard certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"State Board" means the State Board of Education of the State of Delaware established pursuant to 14 Del. C § 104.

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the standard certificate for directors, supervisor, administrative assistants, coordinators, and managers in instructional areas.

3.1 Educational requirements

3.1.1 A master's degree in educational leadership from a regionally accredited college, or

3.1.2 A master's degree in education from a regionally accredited college and a current and valid equivalent central office administrative certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements:

3.1.3.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the master's degree or in addition to it, in administration, to include at least one course in each of the following areas: Curriculum Development, Supervision/Evaluation of Staff, Human Relations, and School Law/Legal Issues and in the area(s) to be supervised (may include courses in curriculum, instruction, and/or methods), and

3.3 Experience requirements

3.3.1 A minimum of three (3) years of teaching experience at the pK-12 level. Teaching experience for directors, supervisors, administrative assistants, coordinators, and managers of programs for exceptional children must have been with exceptional children.

~~302 Certification Administrative Superintendent~~

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for the Superintendent and the general Assistant Superintendent in all school districts.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree plus thirty graduate semester hours or a Doctor's degree from a regionally accredited college or university and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building-level, as a teacher or administrator and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Graduate level coursework must include the following areas:~~

~~1.3.1.1 Personnel Administration~~

~~1.3.1.2 Supervision/Evaluation of Staff~~

~~1.3.1.3 Curriculum Development and~~

~~Instruction~~

~~1.3.1.4 School Business Management~~

~~1.3.1.5 School Law/Legal Issues in Education~~

~~1.3.1.6 Human Resource Management~~

~~1.3.1.7 Organizational Management~~

~~1.3.1.8 Child or Adolescent Development, if not taken at the undergraduate level.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.~~

~~2.1.1 Requirements listed in 1.1. and 1.2.~~

~~2.1.2 Within six semester hours as required in~~

~~1.3~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~304 Certification Administrative Assistant Superintendent For Curriculum~~

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for an individual who is employed to be in charge of the specialized areas of curriculum/program development within a public school district.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college plus 30 graduate semester hours and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building-level, as a teacher or administrator and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 A minimum of 18 semester hours of graduate level coursework in Curriculum to include: curriculum development, design, implementation and evaluation and;~~

~~1.3.2 A minimum of 18 semester hours of graduate level coursework in the area of administration, to include one course in each of the following areas:~~

~~1.3.2.1 Supervision/Evaluation of Staff~~

~~1.3.2.2 School Business Management~~

~~1.3.2.3 School Law/Legal Issues in Education~~

- 1.3.2.4 Human Resource Management
- 1.3.2.5 Organizational Management
- 1.3.2.6 Personnel Administration
- 1.3.2.7 Child Development if not taken at

undergraduate level 1.2.1.8 Adolescent Development if not taken at undergraduate level.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets requirements specified in 1.1 and 1.2 and,

2.1.2 Within nine semester hours of meeting the requirements in 1.3.1 and 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1532 Certification Administrative - School Leader II

1.0 This regulation shall apply to the issuance of a standard certificate for school district superintendents and assistant superintendents, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Full-time school leadership” means full-time experience as a principal or assistant principal or as a district level administrator.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“Standard certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del. C. § 104.

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for school district superintendents and assistant superintendents.

3.1 Educational requirements.

3.1.1 A doctoral degree in educational leadership from a regionally accredited college, or

3.1.2 A master’s or doctoral degree in education from a regionally accredited college and a current superintendent or assistant superintendent certificate from another state, or

3.1.3 A master’s or doctoral degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders/superintendents. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3 of this regulation shall provide evidence of graduate course work in the following areas, either as part of the master’s or doctoral degree program or in addition to it.

3.1.2.1 Personnel Administration

3.1.2.2 Supervision/Evaluation of Staff

3.1.2.3 Curriculum Development and

Instruction

3.1.2.4 School Business Management

3.1.2.5 School Law/Legal Issues in Education

3.1.2.6 Human Resource Management

3.1.2.7 Organizational Management

3.1.2.8 Child or Adolescent Development, if not taken at the undergraduate level.

3.2 Experience requirements

3.2.1 A minimum of five (5) years of experience as a teacher or specialist or full-time school leadership at the pK-12 level, or any combination of the three types of experiences, at the building or district level.

Educational Impact Analysis Pursuant To 14 Del.C. Section 1305(q)

1507 Professional Growth Salary Increments

A. Type Of Regulatory Action Requested

New Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to adopt regulation 1507 professional Growth Salary Increments. It is necessary to adopt this regulation in order to provide procedures for implementation of movement by educators on the salary schedule set forth in 14 Del.C., §1305. This regulation addresses movement from one column to another based on the satisfactory completion of graduate level course work toward a master’s degree or graduate level course work completed toward a second master’s degree, a doctorate, or directly related to an educator’s job assignment.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement by promoting the pursuit of relevant graduate level education programs by educators to help ensure that highly-qualified teachers teach Delaware students.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses educator professional growth salary incentives, not equity in students' education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses the educator professional growth salary incentives, not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator professional growth salary incentives, not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 Del. C. Requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no additional cost to local school boards for compliance with

the regulation.

1507 Professional Growth Salary Increments

1.0 Content: This regulation shall apply to professional growth salary increments for educators, pursuant to 14 Del.C. §1305(q).

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Critical needs areas” means content, specialty, or administrative areas identified by the Department as areas of shortage in Delaware schools.

“Department” means the Delaware Department of Education.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del.C. Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board, but does not include substitute teachers.

“Graduate level course” means any course which is awarded graduate level credit by a regionally accredited college or university.

“Matriculated graduate credit” means credit earned from a regionally accredited college or university earned toward a master's degree or a doctorate degree.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.

3.0 Educators who hold a bachelor's degree and who are enrolled in a master's degree program at a regionally accredited college or university may accrue graduate level credits toward salary increments on the basic salary schedule for educators, set forth in 14 Del.C. §1305(a). No credits earned prior to the conferring of a bachelor's degree may be applied toward movement on the salary schedule. No credit may be applied more than once toward movement on the salary schedule.

3.1 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 15 column of the basic salary schedule for educators, set forth in 14 Del.C. §1305(a), upon completion of 15 graduate credits toward a master's degree.

3.2 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 30 column of the basic salary schedule for educators, set forth in 14 Del.C. §1305(a), upon completion of 30 graduate credits toward a master's degree.

3.3 Upon completion of a master's degree program at an accredited college or university, an educator may apply

for movement to the master's degree column of the basic salary schedule for educators, set forth in 14 Del.C. §1305(a).

4.0 Educators who hold a master's degree may accrue credits beyond the master's degree toward salary increments toward a master's degree plus 15 graduate credits, a master's degree plus 30 graduate credits, a master's degree plus 45 graduate credits, or a doctorate degree on the basic salary schedule for educators, set forth in 14 Del.C. §1305(a). All credits taken must be graduate level and must be:

4.1 Earned through a graduate-level course of study and clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 Del.C. Chapter 12, or

4.2 Earned toward a second master's degree, or

4.3 Matriculated graduate credits earned toward a doctorate degree.

5.0 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours will be converted by the Department to semester hours by multiplying the number of quarter hours by two-thirds.

6.0 Acceptable Grades

6.1 All grades for graduate level credit submitted for a professional growth salary increments must be a grade of "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of "pass" is acceptable.

7.0 Trade and Industry teachers: A bachelor's degree equivalent for trade and industry teachers shall be two years of college and six years of work experience (14 Del.C. §1301). Undergraduate credit in a matriculated bachelor's degree may be accepted in lieu of graduate credit for trade and industry teachers who do not hold a bachelor's degree. Initial placement on the basic salary schedule for educators, set forth in 14 Del.C. §1305, for trade and industry teachers who have completed two years of college and six years of work experience is at the bachelor's degree level. In order to be eligible for movement on the basic salary schedule, trade and industry teachers must possess a standard certificate.

7.1 Movement beyond the bachelor's degree level on the basic salary schedule for trade and industry teachers shall apply as follows:

7.1.1 75 credits toward a bachelor's degree is equivalent to a bachelor's degree plus 15 credits.

7.1.2 90 credits toward a bachelor's degree is equivalent to a bachelor's degree plus 30 credits.

7.1.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.

7.1.4 A master's degree is equivalent to a

master's degree plus fifteen credits on the basic salary schedule.

7.1.5 A master's degree plus fifteen credits is equivalent to a master's degree plus 30 credits on the basic salary schedule.

7.1.6 A master's degree plus thirty credits is equivalent to a master's degree plus 45 credits on the basic salary schedule.

7.1.7 A master's degree plus 45 credits is equivalent to a doctorate degree on the basic salary schedule.

8.0 Graduate credits which are included in the approved Alternative Routes to Certification as defined in subchapter VI, Chapter 12 of Title 14 of the Delaware Code may be applied by educators enrolled in the approved alternative route toward a master's degree plus 15 credits, a master's degree plus 30 credits, a master's degree plus 45 credits or a doctorate degree on the basic salary schedule for educators, set forth in 14 Del. C., §1305 (a).

9.0 In order to be eligible to receive a salary increment, an applicant for a professional growth salary increment must hold a limited standard, standard or professional status certificate issued pursuant to General Regulations for certification of professional public school personnel and the specific regulations as adopted for certification effective July 1, 1993, or an initial, continuing, or advanced license issued by the Department in accordance with Subchapter III of Chapter 12 of Title 14 of the Delaware Code. An educator employed on an emergency certificate pursuant to 14 DE Admin. Code 1515 is eligible to receive a salary increment.

10.0 Acceptable Professional Degrees

10.1 In order to be applicable to professional growth salary increments, master's and doctorate degrees must be directly related to an area or specialty in which the educator is employed, which has been identified as a critical needs area in K-12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue. Any such request from a district or charter school, if applicable must be in writing and must be submitted with the completed application for a salary increment.

11.0 Application Procedures

11.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 Del.C. §1305(a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.

11.1.1 An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to

the school district office for transmittal to the Office of Professional Accountability.

11.1.2 The applicant shall arrange for official transcripts to be submitted by The college or university directly to the Office of Professional Accountability or delivered by the applicant in an unopened, unaltered envelope.

11.1.3 An application for a salary increment for the current fiscal year (July 1 – June 30) must be received in the Office of Professional Accountability no later than June 1. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.

12.0 Effective Date of Salary Adjustment

12.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed.

12.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

12.3 No salary increment shall be retroactive to a prior fiscal year.

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)

1511 Issuance And Renewal Of Continuing License

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 1511 Issuance and Renewal of Continuing License concerning the requirements for the issuance and renewal of a continuing license. This regulation shall apply to the issuance and renewal of a continuing license as established by 14 Del. C. § 1211 and § 1213. It is necessary to amend this regulation in order to comply with changes in statute which were recently enacted. Included in the changes are the inclusion of expiration of a license during the school year as an exigent circumstance, including the Department's authority to issue a continuing license to an applicant licensed as an educator in another jurisdiction who provides

evidence of having completed three or more years of successful teaching, and the Department's authority to issue a continuing license to an applicant who does not otherwise meet the requirements for a continuing license after individual review of the applicant's credentials.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and requires that educators be fully qualified to teach a subject area and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of a continuing license and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator licensure, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational

policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to local school boards for compliance with the regulation.

1511 Issuance And Renewal Of Continuing License

1.0 Content: This regulation shall apply to the issuance and renewal of a continuing license for educators, pursuant to 14 Del.C. § 1211 and § 1213 2.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“College credit” means graduate or undergraduate level coursework and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

“Clock-hour” means actual time spent in professional development, not credit hours.

“Cooperating teacher or intern supervisor” means an individual working with student teachers or graduate or undergraduate interns as part of a state-approved educator preparation program.

“Clusters” means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters must be approved by the Standards Board and the State Board.

“Curriculum or assessment development” means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual’s professional responsibilities.

“Delaware Administrator Standards” means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code ~~394~~ 1594, Delaware Administrator Standards.

“Delaware Professional Teaching Standards” means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code ~~393~~ 1593, Delaware Professional Teaching Standards.

“Department” means the Delaware Department of Education.

“Educational project” means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which

credit is claimed, completed to enhance the individual’s professional practice, with the development of a final product or report.

“Educational travel” means a travel experience including 15 or more clock hours of work time directly related to the individual’s professional responsibilities, including a final project to be used to enhance the individual’s work.

“Educator” means ~~an employee paid under 14 Del.C. §1305.~~ means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Formal study group” means documented participation in a study group, related to an individual’s professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, as a form of professional development.

“Initial License” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Knowledge and skills” means understandings and abilities that, when acquired by educators, lead to more effective instruction.

“Mentoring” means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period.

“NBPTS or similar national certification” means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in an individual’s job-related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

“Peer coaching” means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer-coaching or peer assistance program.

“Presentation” means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual’s professional responsibilities. “Professional conference, workshop, institute, or academy” means a program offered either within, or outside, the state

that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

“Professional development” means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction.

“Professional development activities” means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve educator performance.

“Professional development cluster” or **“cluster”** means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

“Professional portfolio” means a formal collection of artifacts and exhibits that include required examples of an individual's professional work based upon specific performance tasks or standards.

“Professional programs or committees” means job related service, designed to enhance the profession.

“Publication” means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C., § 104.

“State” means State of Delaware.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 Del.C. § 104.

3.0 Issuance of Initial Continuing License: In accordance with 14 Del.C. § 1211, the Department shall issue, upon application, a continuing license to an educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del.C. § 1210 and § 1211. The Department shall issue a continuing license to an applicant licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience. A continuing license is valid for 5 years unless extended pursuant to 14 Del.C. §1216 or revoked for cause, as defined in 14 Del.C. §1218.

3.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of DPAS II annual summative evaluations for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory DPAS II annual summative evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

4.0 The Department may issue a continuing license to an educator who previously held a valid Delaware certificate that has expired.

4.1 An educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon employment.

4.2 An educator who previously held a valid Delaware standard or professional status certificate which has expired and who has been out of the profession for less than three (3) years may be issued a continuing license, valid for 5 years, upon employment and application on the approved form and evidence of previous Delaware certification.

4.3 An educator who has completed three (3) or more years of successful teaching and who holds a continuing license which has expired who has been out of the profession for more than three (3) years may be issued a continuing license, but must, within the first year of employment, successfully complete a district-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.4 An educator holding a limited standard or temporary certificate and currently employed as an educator in a Delaware public school will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.5 An educator holding a current or expired professional status or standard certificate assigned to work outside the area covered by the professional status or standard certificate will be issued a continuing license, with an emergency certificate for the new area issued ~~one year at a time for a maximum~~ for a period of three years to enable the educator to fulfill the requirements for the standard certificate in the area of the new assignment. Professional status or standard certificates held by an educator at the time of reassignment will be added to the continuing license as standard certificates.

5.0 Renewal of a Continuing License: In accordance with 14 Del.C. §1212, the Department shall renew a continuing license, valid for an additional 5 years, to an educator who has fulfilled the 90-clock hour requirement for professional development. At least one-half of the required hours (45 hours every five years) for educators must be in activities to relate to the educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Section 3.1, shall be submitted to the Department with the application for renewal. The 90-clock hours of professional development must have taken place during the term of the continuing license.

5.1 Options for Relicensure

**Re-licensure Options – Specifications – Teachers/
specialists/administrators**

OPTION	MAX. HOURS	HOUR VALUE	VERIFICATION	CRITERIA
College Credit	No limit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Must be completed at a regionally accredited college. Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.
"Clusters" of skills & knowledge. Planned school Prof. Dev. Day if activities Part of Approved Cluster	No limit	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster must be prior-approved by Professional Development & Associated Compensation Committee, the Professional Standards Board and the State Board of Education.
Professional Conference/ Workshop/ Institute or Academy	30 clock hours per year 45 clock hours per cycle	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff. Copies/ Exhibits of products developed by Applicant. Course Attendance Slip	Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education.
Mentoring	30 per year 45 per cycle	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Must be mentoring of teacher, administrator, or specialist. Must be part of a formal state/ local program.
Cooperating Teacher/Intern Supervisor	30 per year 45 per cycle	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field- based clinical studies. (No prior approval required)	Must be supervision of graduate or undergraduate intern or student teacher in a state- approved educator preparation program.
Presentation	10 per 3 clock hour course; 30 per longer course; 45 per cycle	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Educational Project	30 per year 45 per cycle	Verified clock hours completing project. Minimum of 15 clock hours	Activity Documentation Form* (Prior approval required)	Project must have been prior approved by the Professional Development & Associated Compensation Committee. Must have obtained final approval after completion and verification by PDAC
Curriculum/ Assessment Development	30 per year 45 per cycle	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Must be service on formal committee organized by local, state, national, or international education agency or organization.
Educational Travel	3 per day 30 per cycle	Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.	Activity Documentation Form* (Prior approval required)	Must be prior approved by Professional Development & Associated Compensation Committee. Must have obtained final approval after completion and verification by PCAC.

PROPOSED REGULATIONS

Professional Programs/ Committees	30 per year 45 per cycle	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Must be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	30 per year 45 per cycle	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Must be part of a formal program.
Publication	30 per year 45 per cycle	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.
Professional Portfolio (to be developed by Standards Board).	30 per year 45 per cycle	45 clock hours for completed and approved portfolio.	The Completed/Approved Portfolio.	Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.
NBPTS Certification or similar National Certification	30 per year 45 per cycle	45 clock hours for attaining national certification Not complete –verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	30 per year 45 per cycle	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Must relate to the individual's work or assignment. Must include a product.

5.2 Documentation of Clock Hours for Relicensure

5.2.1 For renewal of the continuing license, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used:

1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for. Activities requiring prior approval must be approved by the educator's immediate supervisor. Professional development activities that are part of a DPAS II assistance plan may be used to satisfy this requirement.

5.2.2 Criteria for determining if activities are acceptable for clock hour credit include the following:

5.2.2.1 The activity enhances the knowledge

and skills in the educator's job or contributes to his/her school or profession.

5.2.2.2 The activity meets one of the relicensure options.

5.2.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.2.2.4 The activity is completed during the term of the educator's current continuing license.

5.2.2.5 The activity addresses specific Professional Teaching or Administrator Standards.

5.2.2.6 Participation in, or completion of, the activity can be documented.

5.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the educator's position at the time the clock hours were completed.

6.0 To obtain renewal of a continuing license, educators are required to participate in professional development activities totaling 90 clock hours every five years. The 90 clock hours must be completed during the five-year term of the license. All activities must relate to the 14 Del. Admin. Code ~~393~~ 1593, Delaware Professional Teaching or 14 Del. Admin Code ~~394~~ 1594, Delaware Administrator Standards.

7.0 Candidates for renewal of a continuing license may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5.1 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the 90-clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule. The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

8.0 The Department may extend a continuing license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

9.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the continuing license.

10.0 An applicant shall disclose his or her criminal conviction history upon application for a continuing license. Failure to disclose a criminal conviction history is grounds for denial or revocation of a continuing license as specified in 14 Del.C., § 1219.

11.0 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to

meet the new continuing license renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

12.0 A license holder whose license expires during the school year may have the continuing license extended until the last day of the school year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

13.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a continuing license on an individual basis and grant a continuing license to an applicant who otherwise does not meet the requirements for a continuing license, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. 4805(a))

The Lottery issues these proposed amendments pursuant to 29 Del. C. §4805(a) and 29 Del. C. §10115. The Lottery will accept written comments from June 1, 2003 through June 30, 2003. The Lottery will hold a public hearing on the proposed amendments on June 26, 2003 at 3:00 p.m. at the Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Wayne Lemons, Lottery Director, at the same above-listed address.

The Lottery proposes to amend Video Lottery Regulation as follows:

1. amend Video Lottery Regulation 5.2.1(2) to provide that the maximum bet of \$100 is subject to Video Lottery Regulation 7.3 which permits the Director to authorize extended plays or games on a video lottery machine;

2. amend Video Lottery Regulation 6.10 to provide that video lottery agents exercise caution and good judgment in extending credit and act in compliance with all federal and state laws;

3. repeal Video Lottery Regulation 6.18 which prohibits video lottery agents from providing financial assistance or credit to players;

4. amend Video Lottery Regulation 6.30 to provide that no automated teller machine may be within twenty-five feet of any video lottery machine;

5. amend Video Lottery Regulation 7.2 to lower the minimum bet on video lottery machines from \$.05 to \$.01;

6. amend Video Lottery Regulation 7.3 to provide that the Director may authorize extended plays and games on video lottery machines which are not subject to the \$100 maximum bet.

Proposed Changes to Video Lottery Regulations

5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in 29 Del.C. §6924 enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall supply more than 65% of the total number of video lottery machines at the premises of any agent. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2 All contracts with technology providers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of \$100 shall be permitted for wagering on a single play of any video game except that the Director pursuant to Regulation 7.3 may authorize extended plays or games on a video lottery

machine in excess of the \$100 maximum bet limit.

(3) For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

(4) Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines;

(5) The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director;

(7) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director; provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(8) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

(9) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

(10) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.3 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.4 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.5 Technology providers shall hold harmless the agency, the State of Delaware, and their respective

employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.6 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.7 The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.8 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.9 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.10 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery

machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.11 The following duties are required of all licensed technology providers, without limitation:

(1) Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

(3) Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware.

(4) Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

(5) Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

(6) Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

(7) Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

(8) Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

(9) Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

(10) Maintain all required records.

(11) Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

(12) It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery

machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

(14) Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del. C. chapter 48.

6.0 Agents: Duties

The following duties are required of all licensed agents:

6.1 Provide a secure location for the placement, operation, and play of all licensed video lottery machines located on the licensed agent's premises.

6.2 Permit no person to tamper with or interfere with the approved operation of any licensed video lottery machine.

6.3 Assure that telephone lines from the agency's central computer to the licensed video lottery machines located on the licensed agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.

6.4 With respect to video lottery operations, contract only with officers, directors, owners, partners, key employees, and suppliers of video lottery equipment and paraphernalia authorized by the agency to participate in video lottery operations within the State of Delaware.

6.5 Ensure that licensed video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence and by the use of surveillance cameras at all times.

6.6 Ensure that licensed video lottery machines are placed and remain as placed in the specific area of the premises as approved by the lottery. Any relocation of a licensed video lottery machine or machines requires prior approval from the agency.

6.7 Monitor video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated.

6.8 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.

6.9 Maintain at all times sufficient change and cash in denominations accepted by the video machines located in the premises.

6.10 ~~Extend no credit~~ Exercise caution and good judgment in extending credit for video lottery machine play, and comply with all applicable federal and state laws.

6.11 Exercise caution and good judgment in providing cash for checks presented for video lottery machine play.

6.12 Report promptly all video lottery machine malfunctions to the appropriate technology provider and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.

6.13 Conduct agency approved advertising and promotional activities related to video lottery operations.

6.14 Install, post and display prominently at locations within or about the premises signs, redemption information and other promotional material as may be required by the agency.

6.15 Permit video lottery games to be played only during those hours established and approved by the Director.

6.16 Assume responsibility for the proper and timely payment to players of credits or tokens awarded.

6.17 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery or horse racing or harness horse racing and prohibit illegal gambling on the premises.

~~6.18 Provide no form of financial assistance or grant credits other than credits issued by a video lottery machine to enable players to play video games.~~ (Reserved)

6.19 Attend all meetings, seminars, and training sessions required by the agency.

6.20 Supervise its employees and their activities to ensure compliance with these rules.

6.21 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age, and no credits submitted for redemption beyond the 365 day time limit will be redeemed.

6.22 Provide dedicated power and a proper video lottery machine environment in accordance with the specifications of the agency.

6.23 Furnish to the Director complete information pertaining to any change in ownership of the agent or the owner of the premises or beneficial owner (other than a change in ownership by an owner of less than twenty (20) percent of the issued and outstanding capital stock of the agent or premises owner if such stock is publicly traded).

6.24 Promptly report to the lottery any violation or

any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

6.25 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

6.26 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.

6.27 Maintain all required records.

6.28 Provide at the request of the Director immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.

6.29 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom video lottery business is conducted. The agent shall pay the players and transfer the net proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 Del. C. chapter 48.

6.30 Ensure that there are no automated teller machines (ATMs) ~~on the premises or within twenty-five (25) fifty (50) feet of the boundary of the premises~~ any video lottery machine on the premises.

6.31 Locate all video lottery machines within the viewing range of closed circuit television cameras at all times, including both normal business hours and those periods when video lottery operations are closed. The presence of these cameras is to ensure the integrity of the lottery, the video lottery operations, and the safety of the patrons.

6.32 Comply with such other requirements as shall be specified by the Director. The agent shall submit to the Director a description of its system of internal procedures and administrative and accounting controls which shall conform to the rules and regulations of the agency and be otherwise satisfactory to the Director in his or her sole discretion.

6.33 Provide, on a continuing basis, to the Director the names and addresses of all employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the security of the video lottery machines, (2) the handling or transporting of proceeds from the video lottery machines, or (3) positions that provide direct access to video lottery machines. It shall be the continuing duty of the video lottery agent licensee to provide for the bonding of any of the above-mentioned employees to ensure against financial loss resulting from wrongful acts on their parts.

Likewise, the agent shall post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bonds shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

6.34 Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.

6.35 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent.

6.36 Comply with the applicable requirements contained in Title 3, §10048 and §10148 and Title 28, §427 of the Delaware Code. The agent shall file an annual report, due January 15th of each year, which provides sufficient information for the Director to determine whether the agent has satisfied the requirements of this provision.

6.37 Comply with the provisions of the business plans as approved and amended.

6.38 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 Del. C. chapter 48.

7.0 Game Requirements

7.1 The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2 Video games shall be based on bills, coins, tokens or credits, worth between \$.01 ~~\$.05~~ and \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended plays or games on a video lottery machine ~~features~~ from time to time to which the maximum wager limit of \$100 shall not apply.

7.4 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5 Each video game shall provide a method for players to view payout tables.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.7 Agents shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this subsection (7.7) shall prohibit the use of coin-in/coin-out machines.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than one hundred and eighty (180) days from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one hundred and eighty (180) days from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one hundred and eighty one (181) days from the date of issuance of the credit slip or occurrence of the winning jackpot. The one hundred and eighty day redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.10 No payment for credits awarded on a video lottery machine may be made unless the credit slip meets the following requirements:

- (1) It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- (2) It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- (3) It is not counterfeit in whole or in part; and
- (4) It is presented by a person authorized to play.

7.11 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section. No credits may be paid in tokens, chips or merchandise.

7.12 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.

7.13 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and

payment.

7.14 Liability for Malfunction - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15 Video lottery machines shall not be operated or available for play on Christmas, Easter, or between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, or between the hours of 2:00 a.m. and 8:00 a.m. on any day other than Sunday.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS
PROTECTION**

Statutory Authority: 16 Delaware Code,
Section 1101 (16 Del. C. §1101)

**Regulation 55.0, Neighborhood Homes for Persons with
Developmental Disabilities**

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection (DLTCRP), has drafted regulations replacing in their entirety regulations pertaining to Neighborhood Homes. In addition to replacing regulations currently enforced by DLTCRP, these regulations incorporate Certification Standards enforced by the Division of Developmental Disabilities Services (DDDS), but not previously promulgated as regulations. These proposed regulations also replace the DDDS Certification Standards in their entirety. The proposed regulations address provisions required of Neighborhood Homes including general licensing requirements, provider performance standards, services required for persons residing in Neighborhood Homes, environmental, medical, transportation, and safety standards.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Tuesday, July 1, 2003, 9:00 AM
Room 198, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Wednesday, July 2, 2003, 10:00 AM
Department of Natural Resources &

Environmental Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the July 2 public hearing.

~~LAWS AND REGULATIONS PERTAINING TO
SANATORIA, REST HOMES, NURSING HOMES,
BOARDING HOMES
AND RELATED INSTITUTIONS~~

~~NEIGHBORHOOD HOME REGULATIONS
STATE OF DELAWARE~~

State Board of Health Regulations
adopted pursuant to 16 Del.C. §1109
January 10, 1992, revised and adopted by
the State Board of Health on April 2, 1993
These regulations are effective for all providers whose
licenses expire on January 31, 1993, or thereafter.

~~TITLE 16 HEALTH AND SAFETY
PART II, CHAPTER II, SANATORIA, REST HOMES,
NURSING HOMES, BOARDING HOMES, AND
RELATED INSTITUTIONS~~

Sections:

- 1101. Definitions
- 1102. Licensing Requirement
- 1103. Existing Institutions
- 1104. Application for License
- 1105. Inspections
- 1106. Issuance of Licenses
- 1107. Suspension or Revocation of Licenses
- 1108. Renewal of License after Suspension or Revocation
- 1109. Regulations
- 1110. Penalties

1101. Definitions

Sanatorium, rest home, nursing home, boarding home, and related institutions, within the meaning of this chapter, mean any institution, building, or agency in which accommodation is maintained, furnished, or offered for any

fee, gift, compensation or reward for the care of more than one (1) aged; infirm, chronically ill, adult psychiatrically disabled, or convalescent person. The word "person" shall not include mother, father, sister, brother, niece, nephew, mother-in-law*, father-in-law, sister-in-law, or brother-in-law of any individual operating a facility under this chapter.

~~1102. License Requirement~~

~~No person shall establish, conduct or maintain in this State any sanatorium, rest home, nursing home, or boarding home for the care of human beings without first obtaining a license from the State Board of Health.~~

~~1103. Existing Institutions~~

~~No person may continue to operate an existing sanatorium, rest home, nursing home, boarding home, or related institution unless such operation shall be approved and regularly licensed by the State Board of Health as provided in this chapter.~~

~~1104. Application for License~~

~~Application for license to establish, maintain, or operate a sanatorium, rest home, nursing home, boarding home, or related institution shall be made to the State Board of Health on forms provided by the State Board of Health stating that the applicant is over eighteen (18) years of age, the type of institution to be operated, the location thereof, and the name of the person in charge.~~

~~1105. Inspections~~

~~Every institution for which a license has been issued under this chapter shall be periodically inspected by a representative of the State Board of Health.~~

~~1106. Issuance of Licenses~~

~~(a) Licenses shall be issued in the following categories:~~

~~(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of this chapter and the rules and regulations of the State Board of Health.~~

~~(2) Provisional License. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to a home which, although not in full compliance, is nevertheless demonstrating evidence of improvement.~~

~~(3) Restricted License. A restricted license shall be granted for a term of ninety (90) days when the home is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit patients to the home to which the restricted license applies during the period of restriction, but the home may remain in operation until such license is revoked, expires, becomes annual or provisional.~~

(b) Fees for issuance and renewal of licenses and provisional licenses issued pursuant to the provisions of this chapter shall be established as stated below and shall be remitted to the General Fund of the State.

(1) Application fees for nursing homes shall be \$250 for nursing homes with 100 beds or fewer, and \$375 for nursing homes with more than 100 beds. Application fees for intermediate care group homes for mentally retarded persons shall be \$50; application fees for neighborhood group homes shall be \$25; application fees for family care homes shall be \$25. The fee must accompany an application for licensure.

(2) A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and a payment of an annual licensure fee of: \$150 for nursing homes with 100 beds or fewer; \$250 for nursing homes with more than 100 beds; \$50 for intermediate care group homes for the mentally retarded; \$25 for neighborhood group homes; \$25 for family care homes.

(3) A provisional or restricted license as authorized by the State Board of Health shall be issued when health requirements are not met. Fees shall be the same as stated in paragraph (2) of this subsection. For health care facilities that have been issued a provisional or restricted license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

1107. Suspension or Revocation of Licenses

The State Board of Health may suspend or revoke a license issued under this chapter on any of the following grounds:

(1) Violation of any of the provisions of this chapter or the rules or regulations issued pursuant thereto.

(2) Permitting, aiding or abetting the commission of any illegal act in the institution.

(3) Conduct or practices detrimental to the welfare of the patient.

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he may appeal for a hearing before the State Board of Health.

1108. Renewal of License after Suspension or Revocation

If and when the conditions upon the suspension or revocation of a license are based have been corrected, and after a proper inspection has been made, a new license may be granted.

1109. Regulations

The State Board of Health may adopt, amend, or repeal regulations governing the operation of the institutions defined in Section 1101 of this Title and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or

welfare of the residents of such institutions.

1110. Penalties

Whoever operates a sanatorium, rest home, nursing home, boarding home, or other health related institution without a license shall be fined not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

Title 16, Chapter 1, Section 107

Whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Board shall be fined not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1000.00) together with costs, unless otherwise provided by law.

NEIGHBORHOOD HOME REGULATIONS

The following Regulations were adopted by the State Board of Health pursuant to 16 Del. C. §1109 on January 10, 1992 and revised and approved by the State Board of Health on April 2, 1993.

SECTION 55.0 — DEFINITION

The following standards are designed specifically for Neighborhood Homes, for five or less persons with mental retardation, which are licensed by the State Board of Health. These homes are distinct from Rest (Family Care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These standards address the minimum acceptable level of living and care conditions for persons with mental retardation in such facilities. The purpose of these standards is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the State Board of Health, in cooperation with the Division of Mental Retardation. In addition to these regulations and where applicable, the provider will be trained in and required to comply with established Division of Mental Retardation certification standards.

SECTION 55.1 — GLOSSARY OF TERMS

55.101 Active Treatment — Activities carried out according to an individualized, written plan to meet that developmental needs of each client.

55.102 Activities of Daily Living — Activities which relate to independent functioning and include but are not limited to getting out of bed, bathing, dressing, eating, ambulation.

55.103 Client — An individual with mental retardation, over eighteen years of age, who, with supervision, is capable

of activities of daily living and self-preservation.

55.104 ~~Division of Mental Retardation~~ — hereafter referred to as ~~DMR or the Division~~.

55.105 ~~Licensed Practical Nurse (LPN)~~ — A nurse who is licensed to practice as a practical nurse pursuant to 24 Del. C. Chapter 19.

55.106 ~~Neighborhood Home~~ — A home providing housing and habilitation services to five or fewer persons with mental retardation and licensed pursuant to section 1101. This definition does not include ICF/MR programs.

55.107 ~~Neighborhood Home Provider~~ — The individual or organization responsible for the operation of the Neighborhood Home.

55.108 ~~Physician~~ — A physician licensed to practice medicine pursuant to 24 Del. C. Chapter 17.

55.109 ~~Registered Professional Nurse (RN)~~ — A nurse who is a graduate of an approved school of professional nursing and who is licensed to practice as a professional registered nurse pursuant to 24 Del. C. Chapter 19.

SECTION 55.2 — LICENSING REQUIREMENTS AND PROCEDURES

55.201 When a Neighborhood Home pursuant to these Regulations plans any physical alteration, two copies of properly prepared plans and specifications for the entire home are to be submitted to the State Board of Health. An approval, in writing, is to be obtained before such work is begun.

55.202 Separate licenses are required for homes maintained in separate locations, even though operated by the same Neighborhood Home Provider. A separate license is not required for separate buildings maintained by the same Neighborhood Home Provider on the same grounds. A license is not transferable from one Neighborhood Home Provider to another or from one location to another.

55.203 The license shall be conspicuously posted in the Neighborhood Home.

55.204 All applications for renewal of licenses and requests for waivers shall be filed with the State Board of Health at least thirty days prior to expiration. Licenses will be issued for a period not to exceed one year (12 months) from the date they are issued.

SECTION 55.3 — GENERAL REQUIREMENTS

55.301 All required records maintained by the institution shall be open to inspection by the authorized representatives of the State Board of Health and/or authorized representatives of the Division of Mental Retardation.

55.302 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

55.303 No Neighborhood Home Provider may adopt rules that conflict with these regulations.

55.304 The State Board of Health shall be notified, in writing, of any changes in the Neighborhood Home Provider, ownership or management.

55.305 The Neighborhood Home Provider shall establish written policies regarding the rights and responsibilities of clients that are consistent with DMR standards, and shall make such policies and procedures available to clients, guardians, next of kin, sponsoring agency (agencies), and authorized representatives of the State Board of Health and the Division of Mental Retardation.

55.306 Each Neighborhood Home shall provide, with the admission agreement, to all clients or their sponsors a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the client during the period of residency.

55.307 Each Neighborhood Home shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

SECTION 55.4 — CERTIFICATION BY THE DIVISION OF MENTAL RETARDATION

55.401 A Neighborhood Home Provider shall be certified by the Division annually pursuant to Division standards and procedures.

55.402 Application for certification shall be made on forms provided by the Division. The application shall be accompanied by:

- a. Policies and Procedures Manual for operation of the Neighborhood Home;
- b. a Table of Organization;
- c. a staffing schedule;
- d. an operating budget.

55.403 The Division shall measure compliance with its standards and procedures using a certification instrument. The certification instrument shall be completed based upon information from the Neighborhood Home Provider, clients, their representatives, documents provided to the Division by the provider, and on-site observations and record reviews by employees of the Division. The service Neighborhood Home Provider shall make all documentation and records deemed necessary by the Division available for the Division's review and site visits shall be permitted at any time. The Division shall have the right of access to any information directly or indirectly related to the service Neighborhood Home Provider's operation of the Neighborhood Home. Documents used by the Division for certification review shall bear the notice that false statements therein are punishable.

55.404 A Neighborhood Home Provider shall operate the Neighborhood Home in accordance with the attachments to the application for certification and the certification instrument. A Neighborhood Home Provider shall

immediately report any deviations from such operation to the Division.

55.405 The financial responsibility, financial condition, business experience, and character and general fitness of the Neighborhood Home shall reasonably warrant the belief that the Neighborhood Home Provider will operate a Neighborhood Home honestly, carefully and efficiently. The Division may investigate and consider the qualifications of a service Neighborhood Home Provider to determine whether the service Neighborhood Home Provider meets this qualification.

55.406 Revocation of a Neighborhood Home license shall automatically terminate the service Neighborhood Home Provider's certification relating to such group home and shall also terminate the contract, if any, with the Division for the operation of such home.

55.407 All applications for annual recertification shall be received by the Division at least 30 days prior to expiration and shall be accompanied by the attachments set forth in Section 55.402.

SECTION 55.5 – PROVIDER QUALIFICATIONS

55.501 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer of tuberculin tests (1) performed annually for all volunteers and employees and (2) performed on all newly admitted clients. The tuberculin test to be used is the Mantoux test containing five tu-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to admission or employment, satisfies this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

(b) Employees, volunteers and clients who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7-21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7-21 days.

55.503 The Neighborhood Home Provider shall have written personnel policies and procedures that adequately support sound client care and are available on site.

55.504 Neighborhood Home Providers shall ensure that each employee is thoroughly familiar with assigned duties and responsibilities.

a) Job descriptions with employee's individual responsibilities and duties shall be made available on site.

SECTION 55.6 – ENVIRONMENT

55.601 To the extent compatible with the need for accessibility, the interior of non-residential buildings shall resemble the interior of buildings in the community used for similar purposes in attributes such as functional arrangement of rooms, furniture and furnishings and décor.

55.602 Heating apparatus shall not constitute a burn or smoke hazard to clients served.

55.603 There shall be sufficient heating, ventilation, and light in all living and sleeping quarters to provide a comfortable atmosphere.

55.604 Neighborhood Homes serving physically handicapped clients shall be accessible to those physically handicapped clients according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

55.605 Neighborhood Home shall be sanitary and free of offensive odors and free of insects, rodents, and vermin.

55.606 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease.

55.607 Stairways, ramps, and open-sided porches shall have adequate lighting and handrails for safety.

a) Non-skid surfaces shall be used when slippery surfaces present a hazard.

55.608 All stairways and hallways shall be kept free and clear of obstructions at all times.

SECTION 55.7 – RESIDENTIAL SERVICES

55.701 The Neighborhood Home Provider(s) and staff shall be responsible for complying with the regulations herein contained.

55.702 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with the physical need of clients.

55.703 Neighborhood Homes shall be furnished with mirrors, including mirrors that are usable by any client who uses wheelchairs.

55.704 Storage space for out-of-season clothing shall be provided in each home.

55.705 There shall be provided one or more areas that are adequate in size and furnished for dining, recreational and social activities. At least 30 square feet per client will be assigned to these areas.

a) When a multi-purpose room is used, it shall have sufficient space to prevent interference of one activity with another.

b) Basement space may be used for client activities if there is a minimum of two (2) fire exits.

55.706 There shall be refrigeration for perishable foods in the Neighborhood Home.

55.707 Exterminator services shall be required when there is evidence of any infestation.

55.708 Waste material, cans, rubbish and other litter shall not be permitted to accumulate on the premises of the Neighborhood Home.

SECTION 55.8 – SECURITY AND OBSERVATION

55.801 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of clients served and shall preserve as normal an appearance as possible.

55.802 Doors, walls, and partitions shall not contain vision panels or other devices to afford observation unless indicated by the specific needs of all clients who use the room or area.

SECTION 55.9 – BEDROOMS

55.901 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.

55.902 Sleeping rooms must be outside rooms and must provide for quiet and privacy.

a) Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switched at the entrance to the bedroom.

55.903 Bedrooms shall have walls that extend from floor to ceiling, at least one exterior window, and accommodate no more than two clients.

55.904 Multiple-bed bedrooms shall provide at least 75 square feet per client.

55.905 Single-bed bedrooms shall contain at least 80 square feet.

55.906 Bedrooms shall contain additional space as needed for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

55.907 If a bedroom is below grade level, it must have a window that:

a) Is usable as a second means of escape by the client(s) occupying the room; and

b) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

55.908 The Neighborhood Home shall contain sufficient storage spaces to accommodate all in-season clothing of each client;

55.909 and storage space for personal items; to include minimally closet space and two drawers in a chest of drawers.

55.910 and sufficient seating and flat surfaces to allow each client to perform tasks or pursue leisure interests.

55.911 Each client shall have a bed suitable for his or her physical stature and condition.

55.912 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient warmth.

55.913 Hospital-type beds, the absence of pillows, flat pillow, the use of plastic or other materials to keep beds and pillows dry, or other departures from the normalization principle shall be justified in each case in the client's record.

55.914 There shall be a sturdy bedside stand, chair, and reading light for the client.

55.915 Each bedroom window shall have a window treatment that closes for privacy.

SECTION 55.10 – BATHROOMS

55.1001 There shall be private toilet facilities with a shower or tub in each Neighborhood Home. These facilities shall be accessible to the client according to his/her client needs as documented in the Client Program Plan (IPP).

a) Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

b) There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.

c) Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped clients, as dictated by the clients' needs.

d) There shall be at least one (1) toilet of appropriate size for each four (4) clients:

1. Each toilet shall be equipped with a toilet seat.

2. Toilet tissue shall be readily accessible at each toilet.

e) There shall be at least one (1) wash basin for each four (4) clients.

f) There shall be at least one (1) tub or shower for each four (4) clients.

g) Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

h) Shower and tub areas shall be equipped with substantial hand grip bars and slip resistant surfaces.

i) Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way as to minimize the danger of breakage.

SECTION 55.11 – SAFETY AND SANITATION

55.1101 The Neighborhood Home shall comply with governmental safety and sanitation regulations.

55.1102 The Neighborhood Home's program must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, and plumbing.

55.1103 Requirements of the current edition of the National Fire Protection Association's Life Safety Code shall be met in all buildings used by the clients.

55.1104 The Neighborhood Home shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations.

55.1105 The Neighborhood Home shall document actions taken to correct deficiencies noted in these reports.

55.1106 The Neighborhood Home shall provide adequate clean linen and dirty linen storage areas.

55.1107 Hot water at shower, bathing and handwashing facilities shall not exceed 110 degrees F. (43 degrees C).

55.1108 The Neighborhood Home Provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other potentially toxic materials.

55.1109 There shall be separate areas of storage of:

- a) Food items.
- b) Cleaning agents, disinfectants and polishes.
- c) Poisons, chemicals and pesticides.
- d) Eating, serving and cooking utensils.

SECTION 55.1200 EMERGENCIES AND DISASTERS

55.1201 The Neighborhood Home shall have a minimum of two means of egress.

55.1202 The Neighborhood Home shall have an adequate number of UL approved smoke detectors in working order.

a) In a single level Neighborhood Home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the Neighborhood Home.

b) In a multi-story Neighborhood Home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the Neighborhood Home.

55.1203 There shall be a two and one-half to five pound ABC Fire Extinguisher in the Neighborhood Home that is readily accessible and visible. Extinguisher is to be checked annually.

55.1204 The Neighborhood Home Provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing persons and such procedures shall be communicated to all staff.

55.1205 The procedures shall assign specific personnel to specific tasks and responsibilities.

55.1206 The procedures shall contain instructions related to notification procedures and to the use of alarm and signal systems to provide for alert to clients according to their disability, visual signals with alarms where there are clients who cannot hear.

55.1207 Evacuation routes and the location of fire-fighting equipment shall be posted in areas used by the public as required by the Life Safety Code and state and federal regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of clients and staff.

55.1208 The Neighborhood Home shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.

55.1209 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.

55.1210 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors or other agencies.

SECTION 55.1300 EVACUATION DRILLS

55.1301 Evacuation drills shall be held quarterly for each shift of Neighborhood Home personnel. Drills shall be held on different days of the week. Drills shall be held at different times of the day, including times when clients are asleep.

55.1302 During drills, clients shall be evacuated to safe areas, unless their ability to evacuate independently has been documented, or unless actual evacuation would endanger the health or safety of those clients.

55.1303 As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all clients and staff are familiar with the evacuation requirements and procedures. Any problems clients have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.

55.1304 Clients who are unable to achieve the exit schedule prescribed by accepted standards with available assistance shall be either relocated or provided with additional assistance.

SECTION 55.1400 TRANSPORTATION

55.1401 The transportation system operated by, or under contract to, the Neighborhood Home shall meet local and state licensing, inspection, insurance, and capacity requirements.

55.1402 Vehicles used to transport clients with physical disabilities shall be adapted to their needs.

55.1403 Drivers of vehicles shall have valid and appropriate drivers' license.

55.1404 Emergency transportation shall be available on a 24-hour basis.

SECTION 55.1500 MEALTIMES

If meals are served:

55.1501 Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water backflow or to contamination by condensation or leakage.

55.1502 The Neighborhood Home's meal and menu planning shall be supervised by a registered dietitian or nutritionist or by an experienced person who consults a

registered dietitian or nutritionist at least quarterly.

55.1503 Clients shall be offered opportunities for choices in food selection.

55.1504 Menus and records of foods actually served shall be retained for a period of three months.

55.1505 Foods served shall provide for sufficient amounts of food for meals and snacks and a sufficient variety on a daily, weekly, monthly, and seasonal basis.

55.1506 Meals shall be served so that they are flavorful, attractive in appearance, at appropriate serving temperature, and have preserved their nutritional value.

55.1507 The daily diet for each client shall include a minimum of three balanced meals a day with food from the four basic food groups.

55.1508 Nutritional intake of clients receiving a medically prescribed modified diet shall be followed, reviewed and monitored by a nurse, dietitian or other medical personnel as appropriate.

55.1509 Clients shall eat in an upright position or in a position that is medically indicated.

55.1510 There shall be refrigeration for perishable foods in the Neighborhood Home.

a) There shall be at least one refrigerator and one unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 45°F or below.

55.1511 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.

55.1512 There shall be a dishwasher, or facilities for performing a wash, rinse, and a final sanitizing rinse.

55.1513 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes.

SECTION 55.1600 — MEDICAL AND HEALTH CARE

55.1601 Genetic medical services, including a physician and dentist, shall be identified.

55.1602 There shall be written policies on physical examinations for clients.

55.1603 Physical examinations and dental evaluations shall be made least annually.

55.1604 Upon confirmation of reportable disease, the appropriate Health Officer of the Division of Public Health shall be notified by the Neighborhood Home Provider.

55.1605 The Neighborhood Home Provider shall insure transportation including for emergency medical treatment in the event of an emergency with a client.

55.1606 The Neighborhood Home Provider shall provide or arrange transportation for the client's routine medical and dental care.

SECTION 55.1700 — MEDICATIONS

55.1701 Clients receiving medication shall be trained to take their own medication, where possible.

55.1702 Providers who have successfully completed a Board of Nursing approved medication training program may assist clients in the taking of medication, provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label. The Neighborhood Home Provider shall maintain a record of all medications taken.

55.1703 No Prescription medication shall be administered to a client without a written order by a physician or other legally authorized person.

55.1704 Injectable medication shall only be administered by registered nurses or licensed practical nurses.

55.1705 The client's response to prescribed medication shall be evaluated by the DMR nurse consultant or private nurse consultant or physician.

55.1706 The Neighborhood Home Provider shall assist the client in reporting side effects to the physician who prescribed the medication. Suspected drug reactions shall be noted in the medication record.

55.1707 Medication errors shall be immediately reported by the Neighborhood Home staff to the physician.

55.1708 A three-day supply of medication shall be available at all times. All medication must be stored in its original container either from the pharmacy or manufacturer with the proper label and specific directions for administration.

55.1709 The Neighborhood Home Provider shall be responsible for the storage of medication. Medication shall be stored under proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59° and 86°F.

55.1710 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36° and 46°F.

55.1711 Medications not in possession of clients shall be kept in a locked cabinet by the person in charge in a manner so that they are not accessible to unauthorized personnel.

55.1712 A medication record shall be maintained for each client. The record shall show the name and strength of each medication being consumed by the client. Each dose consumed shall be recorded by date, time, and initials of person assisting.

55.1713 Documentation of medication errors and corrective action taken is maintained by the Neighborhood Home.

55.1714 A supply of over the counter medication may be stocked by the Neighborhood Home. However, the use of those medications must be authorized by the client's

physician in writing.

SECTION 55.1800 – CLIENT RECORDS

55.1801 A cumulative record containing all information and documents necessary for the provision of needed service(s) shall be maintained chronologically by or for each client.

55.1802 The record shall be readily accessible to those who require such access in order to provide services as described in the client's plan.

55.1803 All information concerning a client served, including information contained in an automated data bank, is confidential and access shall be limited to staff who need to see the record, or to persons specifically authorized by the client or legally qualified representatives.

55.1804 Entries in a client's record referring to actions with another client shall be coded in such a way as to protect the confidentiality of the clients served.

55.1805 The Neighborhood Home shall be responsible for the safekeeping of each client's record and for securing it against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.

55.1806 The record may be removed from the Neighborhood Home Provider's jurisdiction and safe-keeping only in accordance with a court order, subpoena, or statute.

55.1807 The record shall be retained for the period of time required by state law.

SECTION 55.19 – WAIVERS OF STANDARDS

55.1901 Specific standards may be waived by the State Board of Health so long as each of the following conditions are met:

a. Strict enforcement of the standard would result in unreasonable hardship on the Neighborhood Home Provider.

b. The waiver is in accordance with the particular needs of the client.

55.1902 A waiver must not adversely affect the health, safety, welfare, or rights of any client.

55.1903 The request for a waiver must be made to the State Board of Health in writing by the Neighborhood Home Provider with substantial detail justifying the request.

55.1904 A waiver granted by the State Board of Health is not transferable to another Neighborhood Home Provider in the event of a change in ownership.

55.1905 A waiver shall be granted for the term of the license.

55.1906 Client capacity for a Neighborhood Home may be waived from five to six clients where the physical plant, staffing, and client needs justify such an increase.

SECTION 55.20 – SEVERABILITY

55.2001 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

SECTION 55.0 - PURPOSE

The following regulations are designed specifically for Neighborhood Homes, for five or fewer persons with developmental disabilities, which are licensed by the Division of Long Term Care Residents Protection. These homes are distinct from Rest (Family care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These regulations address the minimum acceptable level of living conditions and supports for persons in Neighborhood Homes. The purpose of these regulations is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the Division of Long Term Care Residents Protection (DLTRCP) and the Division of Developmental Disabilities Services (DDDS).

SECTION 55.1 - DEFINITIONS

55.101 Action Plan - The portion of the Essential Lifestyle Plan (ELP) that lists, and is used to track, those desired outcomes which are important to a person.

55.102 Annual Conference - The yearly interdisciplinary team meeting held with the person served and his/her family to develop or update the ELP after a review of the various assessments done on the person and discussion with the individual as to his/her aspirations and desires. The annual conference must be held within 30 days of the initiation of DDDS funded residential services and be held no more than 365 days from the previous annual conference.

55.103 Assessment - The process of gathering information to describe what been learned about a person, and what others need to know or to do to support the person in attaining a healthy, safe and meaningful life.

55.104 Behavioral Support Plan - A written plan detailing individual support measures that is developed based on the findings of a functional assessment.

55.105 Behavioral Support Review Committee - A committee assigned to review behavioral intervention strategies and behavioral support plans containing support procedures.

55.106 Choice - The process by which people make selections from an array of options which are within the context of Division of Developmental Disabilities Services (DDDS) policies and all applicable state and federal laws and regulations intended to safeguard the person and the

rights of others.

55.107 Emergency Behavioral Interventions - A set of DDDS sanctioned procedures available to manage an unanticipated event such as severe aggression or severe property destruction that places the individual or others in imminent danger of physical harm.

55.108 Essential Lifestyle Plan (ELP) - The type of individualized support plan used by the Division of Developmental Disabilities Services. A result of a system of person-centered planning, the ELP outlines how a person wants to live service-related issues which need to be addressed as well as a plan of action for achieving expressed lifestyle choices and adequately addressing service-related issues.

55.109 Evaluation - An assessment process performed by professionals, according to standardized procedures, that incorporates the use, when possible, of standardized tests and measures in addition to informal and observational measures.

55.110 Goals - Desired outcomes that provide the framework upon which service and support actions are based.

55.111 Human Rights Committee (HRC) - A body of individuals composed, primarily or in whole, of impartial members with no direct affiliation with the Division of Developmental Disabilities Services (DDDS), and whose role is to serve as a monitoring agent to safeguard the rights and personal dignity of persons served by DDDS.

55.112 Incident - An occurrence or event, a record of which must be maintained in provider's files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors and omissions in medication/treatment. (Also see Reportable Incident, 55.123.)

55.113 Individual Records - Those records pertaining to a person served which are essential for effective individual planning, plan implementation, establishing and maintaining a personal history of the person, and for protecting legal rights of the person, the agency and the agency staff.

55.114 Interdisciplinary Team - Also known as "Treatment Team" or "Team," this is a group consisting of those who are knowledgeable about the person served, whose participation is required to identify the supports the person wants and/or needs so as to help him/her achieve a healthy, safe and meaningful life.

55.115 Intrusive - The unwanted or uninvited introduction of procedures or other people/staff into the lives or daily routines of persons served which is found bothersome by the person and which causes a perceived interference with the life and/or daily routines of the person.

55.116 Least Restrictive - Descriptive of services and

treatments that are delivered with a minimum of limitation, intrusion, disruption or departure from commonly accepted patterns of living in the community.

55.117 Neighborhood Home - A single-unit house providing residential and support services to five or fewer people and licensed pursuant to 16 Delaware Code, §1101. This definition does not include ICF/MR programs.

55.118 Neighborhood Home Provider - An individual or organization responsible for the operation of the Neighborhood Home.

55.119 Outcomes - The major expectations and desired achievements for people's lives. The accompanying supports that are developed should reflect what people expect from the services and assistance they receive in order to reach their desired outcomes.

55.120 Person/People/Individual/Resident - Terms used throughout these regulations that identify someone receiving services and supports in a Neighborhood Home.

55.121 Physical Environment - Those locations in which the individual lives, works, recreates or receives services.

55.122 Physical Restraint - Approved manual methods that restrict the movement of the individual or the normal functioning of an individual's body or portion of the body.

55.123 Reportable Incident - An occurrence or event which must be reported at once to the Division of Developmental Disabilities Services (DDDS) and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. DDDS will forward the report to the Division of Long Term Care Residents Protection (DLTCRP). (Also see Incident, 55.112.)

55.124 Rights Restriction - The limitation, disruption or constraint of a person's freedom to engage in activities generally allowed to others in society. Such is permissible only on a case-by-case basis and when there has been due process, official approval received and the need for such documented.

55.125 Safety - The absence of recognizable hazards in the design, construction and maintenance of any component of the physical environment including equipment and the establishment of procedures to evaluate and to reduce risks of physical harm.

55.126 Sanitation - The promotion of hygiene and prevention of disease by the maintenance of uncontaminated conditions.

55.127 Screening - The initial part of the assessment process which is of limited scope and intensity and is designed to determine whether further evaluation or other

intervention is indicated.

55.128 Supplemental Plans - Detailed instructions or preparations needed to support an outcome or opportunity. Types of such plans include learning, motivating, achieving a personal goal and gaining a new opportunity. Supplemental plans are used to outline a course of action in an effort to accomplish an outcome or provide an opportunity which has been identified in the action plan.

55.129 Support - A broad term used to refer to those methods designed to help an individual achieve a meaningful life and to function to his/her fullest capacity.

55.130 Support Coordinator - The staff person responsible for monitoring and coordinating all activities in implementing the person's plan.

55.131 Target Behavior - A behavior to be changed. A target behavior may be selected because it represents either a behavioral deficit, an excess or one not culturally normative.

55.132 Transfer - Movement of a person from one program, service or residence to another within DDDS.

SECTION 55.2 - LICENSING AND GENERAL REQUIREMENTS

55.201 When a Neighborhood Home pursuant to these regulations plans any physical alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.

55.202 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider. A license shall not be transferred from one provider to another or from one location to another.

55.203 The license shall be conspicuously posted in the Neighborhood Home.

55.204 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.

55.205 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.

55.206 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

55.207 No Neighborhood Home provider shall adopt rules that conflict with these regulations.

55.208 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.

55.209 Each Neighborhood Home provider shall provide with the admission agreement, to all persons or their family member/guardian, a complete statement enumerating

all charges for services, materials and equipment which shall, or may be, furnished to the person during the period of residency.

55.210 Each Neighborhood Home provider shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

SECTION 55.3 - NEIGHBORHOOD HOME PROVIDER PERFORMANCE STANDARDS

55.301 The Neighborhood Home provider shall have a written statement of its mission, values and goals which defines the agency's proactive commitment to helping people live the lifestyle they choose and fosters the least restrictive alternatives of supports and services.

55.302 The Neighborhood Home provider shall have written policies and procedures that delineate how the civil rights of the people served are to be ensured.

55.303 The Neighborhood Home provider shall have a written procedure to handle appeals of decisions made by the provider from people receiving services, their advocates, legal guardians and families. The procedures shall include the use of the Appeal to DDDS Decisions policy.

55.304 The Neighborhood Home provider shall have a written policy that defines and prohibits abuse, neglect, mistreatment, misappropriation of property and significant injury of persons served and a procedure for initiating intervention in all such cases whether the alleged incident occurred within or outside of the Neighborhood Home. The provider shall comply with the provisions of Department of Health and Social Services (DHSS) Policy Memorandum #46 by reporting all instances of abuse, neglect, mistreatment, misappropriation of property or significant injury and the requirements for other reportable incidents. (See 55.123.)

55.305 The Neighborhood Home provider shall have a written policy and procedures for protecting the financial interests of people served.

55.306 The Neighborhood Home provider shall review its written policies and procedures at least annually to ensure that they are in compliance with the requirements of the applicable laws and regulations. Copies of all relevant policies and procedures shall be made available to persons served or their families at any time and be available to any party upon request.

55.307 The Neighborhood Home provider shall maintain a current table of organization identifying its operational elements and programs and administrative personnel and illustrating lines of authority, responsibility a communication. This document shall be shared with provider staff.

55.308 The Neighborhood Home provider's chief executive officer shall designate an employee to assume

management responsibility during his or her absence. All employees shall be informed of who has such responsibility at any given time and who is to be contacted in the event of an emergency.

55.309 The Neighborhood Home provider shall comply with the policies of the Department of Health and Social Services (DHSS) Human Subjects Review Board with regard to conducting research involving people served.

55.310 In all provider activities and references, including name, language of staff, internal documents and communication to the public, the language used shall reflect the Neighborhood Home provider's program, its purposes and promote respect and a positive image of the people served and the staff who support them.

55.311 Services shall be provided to people who are otherwise eligible without regard to disability, gender, age, sexual orientation, race, religion, marital status or ability to pay.

55.312 The Neighborhood Home provider shall not employ individuals under the age of 18.

55.313 The Neighborhood Home provider shall obtain the results of each employment applicant's drug screening for the following drugs

- a. Marijuana/cannabis
- b. Cocaine
- c. Opiates including heroin
- d. Phencyclidine (PCP)
- e. Amphetamines
- f. Barbiturates
- g. Benzodiazepene
- h. Methadone
- i. Methaqualone
- j. Propoxyphene

55.314 The Neighborhood Home provider shall complete a state and federal criminal background check for each employment applicant through DLTCRP.

55.315 The Neighborhood Home provider shall ensure that each employee is thoroughly familiar with assigned duties and responsibilities. Job descriptions with employees' individual responsibilities and duties shall be made available on site.

55.316 Orientation and training shall be provided to all employees in accordance with the training policy of DDDS and shall be documented, continuously updated and made available for review upon request.

55.317 The Neighborhood Home provider shall ensure that staff training is relevant to the support needs of the people served and shall continuously evaluate training effectiveness by assessing employees' demonstrated competencies and by modifying training programs accordingly.

55.318 The Neighborhood Home provider shall provide each person with an oral and written summary of his/her rights and an explanation of how to exercise those

rights in easily understandable language. This review shall be documented in the person's record and shall occur at least annually. The rights of a person shall not be restricted without due process; any restrictions, including the need for guardianship, shall be reviewed at least annually. All investigations into alleged violations of individuals' rights and the actions taken to intervene in such situations shall be documented.

55.319 Each Neighborhood Home provider shall have its own human rights committee or shall participate in a system-wide human rights committee. Each human rights committee shall be responsible for assuring that people's rights are supported and shall be approved by the Division of Developmental Disabilities Services. Human rights committees shall comply with DDDS minimum standards of operations of such committees, and their decisions concerning persons served by DDDS shall be subject to the review and approval of the DDDS human rights committee.

55.320 Each human rights committee member shall be provided with a written explanation and training in the committee's duties and responsibilities. Any member who has been involved in the development, review or approval of a matter before the committee shall be excluded from decision-making related to that matter.

55.321 The Neighborhood Home provider shall safeguard and maintain records regarding the funds of people receiving services and support their efforts towards independence/self-management of those funds. Requests to the contrary, other than from the person's legal guardian (of property), shall require a recommendation of the Interdisciplinary Team, accompanied by substitute safeguards, with approval from the Director of the DDDS Community Services or Special Populations program. Such actions shall be documented in the person's record. The financial records shall be available on request to the person, his/her legal guardian (of property) or other individuals or entities authorized by DDDS.

55.322 Funds for one person shall not be commingled with the funds of another person. People shall have community bank accounts in their own names unless otherwise indicated by them or their legal guardian of property.

55.323 The person and his/her family, guardian, or fiscal representative/representative payee shall be counseled when large balances begin to accrue or when financial issues may affect the individual's eligibility for benefits or services.

SECTION 55.4 - PERSONS' SERVICES AND SUPPORTS

55.401 To the greatest extent possible, the person chooses where and with whom he/she shall live.

55.402 With due regard to each individual's right to privacy and as agreed upon by the person served, the

person's family, guardian, advocates, spouse and friends shall be encouraged to visit the person in his/her Neighborhood Home. Visits shall occur at reasonable times and may be without prior notice.

55.403 The Neighborhood Home provider shall facilitate frequent informal visits by persons to the homes of their families and friends in accordance with each party's desire.

55.404 People shall be provided with opportunities and supports to develop and maintain social relationships, to perform different social roles and to participate in the life of their community, including attending and participating in religious activities of their choice. Wherever possible, supports shall be adapted to the cultural background, language and ethnic origin of the person.

55.405 People shall receive support and instruction as appropriate to exercise the rights and responsibilities of citizens such as voting, employment, consumer affairs, law enforcement, paying taxes or consulting an attorney.

55.406 People shall be supported in receiving advocacy and/or legal services as needed.

55.407 People shall receive support and instruction in recognizing and respecting the rights of others as reciprocal to their own.

55.408 If a person is represented by a legal guardian or a substitute decision maker (as defined in the DDDS Consent Policy), such shall be documented in the individual plan; and efforts shall be made to ensure that the person receives continued education, instruction and support to exercise his/her rights and make informed decisions.

55.409 People shall decide when and with whom they wish to share personal information. Prior to the release of information, including the person's name or photo, a written consent shall be signed by the person (unless legally adjudicated to need a guardian), a parent (if the person is a minor), or by a substitute decision maker in accordance with DDDS policy on confidentiality and release of information. The consent shall minimally include:

- a. The designation of time limit with a maximum of 365 days;
- b. The person to whom the information is to be released;
- c. The exact information to be released;
- d. The stipulation that consent may be rescinded at any time.

55.410 People shall be supported to exercise choice, including but not limited to choice in the following:

- a. Clothing and personal possessions;
- b. Telephone use with privacy available;
- c. Time, space and opportunity for privacy;
- d. Opening mail addressed to them unless other arrangements are expressly made;
- e. Deciding when and where to go unless otherwise indicated in their plan;

f. Deciding who will assist them with personal hygiene;

g. Participation in household responsibilities.

55.411 People shall be supported to bathe with the maximum independence and privacy.

55.412 People who are incontinent shall be bathed or cleansed immediately upon voiding or soiling. All soiled items shall be changed immediately.

55.413 Each person shall have an Essential Lifestyle Plan written in terms that are understandable to all, where the person's goals, dreams and aspirations are stated and defined. The person, with the support of the team, shall determine when and how to measure success and attainment of his/her desired outcomes; and such criteria shall be defined in the Essential Lifestyle Plan, as applicable.

55.414 The person's plan shall include financial planning which takes into account the person's resources, assets and benefits in conjunction with his/her personal goals.

55.415 For each person, an interdisciplinary team including the support coordinator and specific people responsible for obtaining services and implementing the support plan, shall be clearly defined. Staff of all Neighborhood Home providers providing any component of service or support shall take an active role in assuring effective communication and overall support coordination.

55.416 The support coordinator shall monitor, review, analyze, observe the implementation and document all components of a person's plan at least monthly.

55.417 If the monthly review determines the need for any action, such action shall be taken in a timely manner by the appropriate team member.

55.418 The support coordinator shall assist the person in locating and obtaining those services and supports identified by the team and shall assist the person in assuming management of those activities for which the person has demonstrated management capacity and/or expressed an interest.

55.419 The support coordinator shall elicit the person's preferences and respect those preferences when they are consistent with the rights and well-being of the person and of others.

55.420 The support coordinator shall facilitate the transfer of the person to another service, service location or service provider when the person desires such a transfer and such is consistent with the person's plan.

55.421 The initial plan and subsequent plans are developed, at the discretion of the person and/or the guardian, with the active participation of the following:

- a. The person;
- b. Support staff who know and care about the person;
- c. Professionals and others with the expertise to design and review elements of the plan, including those who

provide supports or treatment.

d. The person's family, guardian, advocate or friends.

55.422 The person's plan shall be reviewed by his/her team as often as the person decides, but at least yearly (365 days) in conjunction with the person's annual conference or when significant changes occur, to determine the need to continue, revise or terminate services and supports. Any applicable information, including previous plans, shall be reviewed for possible inclusion in the current plan.

55.423 Plans shall be implemented within 30 days of the development of an initial plan and within 30 days of each subsequent annual conference. The initial plan shall be revised within 60 days of initiation of Neighborhood Home services.

55.424 Supplemental plans shall be in place as required by the person's action plan, and shall be based on the person's learning styles.

55.425 Reassessments for those persons receiving services, including direct or indirect clinical services, shall be completed annually in preparation for the annual conference or when there is an indication of need. Reassessments shall be available in preparation for the person's annual conference.

55.426 Meetings concerning the person shall be scheduled at a date, time and location suitable for all team members, especially the person and his/her parents, guardian and/or advocate.

55.427 The Neighborhood Home provider's policies and practices relative to behavioral supports, as evidenced in writing and in ongoing activities, shall be congruent with the policies and practices of DDDS and emphasize positive approaches and behavioral interventions.

55.428 The Neighborhood Home provider shall have its own, or use the DDDS behavioral support committee which shall include:

a. Persons qualified to evaluate published behavioral support research studies and the technical adequacy of proposed behavioral support interventions;

b. Medical and other professionals qualified to evaluate proposals for the use of interventions to manage behavior.

55.429 Prior to the use of behavioral intervention strategies, and absent a crisis situation or psychiatric emergency requiring an immediate response, the following activities shall take place:

a. The physical and social environments shall be analyzed to determine their role in contributing to the target behavior;

b. The necessary modifications shall be made to the environment based on that analysis;

c. Medical treatment shall be obtained for any possible physiological cause of the behavior; and

d. The treatment team shall discuss and document

the risk/benefits of the proposed procedure.

55.430 Prior to the use of behavioral intervention strategies, persons who will implement behavioral support procedures shall have been trained in the procedures specified in the person's plan.

55.431 People receiving services shall not discipline other people receiving services.

55.432 When food is used in a behavioral support plan, good health and nutritionally adequate dietary practices shall be followed.

55.433 The behavioral support plan shall be designed to replace self-limiting behaviors by understanding their purpose or function and by subsequently teaching functionally equivalent behaviors and promoting existing adaptive behaviors to serve the same function.

55.434 Procedures for altering target behaviors shall not be implemented in the absence of target behaviors, in retribution, for the convenience of the staff, as a consequence of insufficient staff or in the absence of positive behavioral support.

55.435 Emergency behavioral interventions, in accordance with Division of Developmental Disabilities Services policies, shall only be used as a last resort to manage an unanticipated and already occurring event which is placing an individual in imminent danger of physical or emotional harm.

55.436 Prior to the implementation of a written behavioral support plan incorporating the use of a restrictive or intrusive technique:

a. The Neighborhood Home provider shall document that acceptable informed consent has been obtained;

b. The behavioral support plan has been reviewed and approved by a behavioral support committee; and

c. The behavioral support plan has been reviewed and approved by a human rights committee.

55.437 Restraint procedures shall be designed to use the minimum amount of restraint necessary to safely manage the person's behavior in order to avoid physical injury to a person and to minimize any possible physical or psychological discomfort.

55.438 Physical restraint shall be used only until the individual is no longer dangerous to him/herself or others and shall be ended immediately if a person begins to exhibit signs of medical distress.

55.439 Only devices specified in the written behavioral intervention strategy shall be used to restrain the individual; and mechanical restraint devices shall be inspected before and after each use to ensure that they are clean and in good repair.

55.440 The monitoring requirement for the restraint procedure shall be specified in the behavioral support plan. The record shall document the time of the institution of the mechanical restraint, the time of release and the time interval

that the person was in restraints, as indicated in the individual plan.

55.441 Rooms used as time-out rooms shall be ventilated, well lit and free from safety hazards.

55.442 The ability of a person to exit a time-out room shall not be prevented by key locks, and time-out rooms shall allow for the immediate entry of staff. The person shall be observable, and the device used to secure the exit shall automatically disengage in the absence of staff.

55.443 Each behavioral support plan utilizing drugs to manage behavior or a psychiatric condition shall:

a. Include a risk/benefit analysis which identifies all potential harmful effects of the drugs in non-technical terms;

b. Specify provisions for at least a quarterly re-evaluation of the continuation of drug use, consideration of reduction or elimination of the drugs or change to less toxic drug(s);

c. Include alternative supports; and

d. Be discussed with the person/guardian regarding the rationale for such treatment and the risks/benefits involved.

SECTION 55.5 - ENVIRONMENT

55.501 Neighborhood Home providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.

55.502 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with persons' choice and the physical needs of the people living in the home. To the extent possible, personal furniture shall be chosen by individuals.

55.503 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to persons served or their support staff.

55.504 Temperature, humidity, ventilation, and light in all living and sleeping quarters shall be maintained to provide a comfortable atmosphere.

55.505 Homes serving persons with physical challenges shall be accessible to those persons with physical challenges according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

55.506 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of persons served and shall preserve as normal an appearance as possible.

55.507 Use of security or observational devices shall constitute a restrictive procedure and require consent and review by the human rights committee. The need for such devices shall be documented in the person's behavioral support plan.

55.508 Homes shall be sanitary, free of offensive odors, insects and uncontrolled pests. Exterminator services shall be required upon evidence of any infestation.

55.509 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease. Litter shall not be permitted to accumulate on the premises.

55.510 Stairways, ramps, walkways and open-sided porches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.

55.511 All stairways, hallways, doorways and walkways shall be kept free and clear of obstructions at all times.

55.512 Mirrors shall be furnished in bedrooms and bathrooms, including mirrors that are accessible by persons who use wheelchairs.

55.513 Each home shall provide storage space for both in season and out of season clothing and storage space for personal items to include, minimally, closet space and four drawers in a chest of drawers.

55.514 Each home shall contain a clothes washer and dryer that are accessible to people unless people use commercial laundromats or are being supported to do so.

55.515 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.

55.516 If a bedroom is below grade level, it must have a window that

a. Is usable as a second means of escape by the person(s) occupying the room; and

b. Is no more than 36 inches (measured to the window sill) above the floor as required under the Health Care Occupancy Chapter of the Life Safety Code.

SECTION 55.6 - MEALTIMES

55.601 The home's meal and menu planning shall be supervised by a registered dietitian or nutritionist or by an inexperienced person who consults a registered dietitian or nutritionist as needed. Therapeutic diet orders, meal and menu planning shall be reviewed, monitored and updated as recommended by the nutritionist/dietitian with a minimum of an annual evaluation. Therapeutic diets shall require a physician's order.

55.602 Nutritional intake of persons receiving a medically prescribed modified diet shall be followed, reviewed and monitored by a nurse, dietitian or other medical personnel as appropriate, as determined by the dietitian or physician.

55.603 Persons shall be offered opportunities for choices in food selection and are actively involved in menu planning and food preparation as part of the daily meal routine.

55.604 Menus and records of foods actually served

shall be retained for a period of three months.

55.605 Foods shall be provided in sufficient amounts for meals and snacks and in sufficient variety on a daily, weekly, monthly, and seasonal basis.

55.606 The daily diet for each person shall include a minimum of three balanced meals a day with food from the four basic food groups.

55.607 Meals shall be served so that they are flavorful, attractive in appearance, at appropriate serving temperature, and have preserved their nutritional value.

55.608 Meals should be provided in locations which provide the opportunity for socialization, choice, sanitation, and also support the person's preference.

55.609 Persons shall eat in an upright position or in a position that is medically indicated.

55.610 There shall be at least one refrigerator and one freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees F. or below.

55.611 Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.

55.612 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.

55.613 There shall be a dishwasher or facilities for performing dishwashing.

55.614 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes in the cooking area.

55.615 There shall be three days supply of food in each home at all times as posted on the menus. Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

SECTION 55.7 - MEDICAL AND HEALTH CARE

55.701 Each person shall have a primary care physician and a dentist and shall receive an annual physical and dental examination unless otherwise recommended by the appropriate professional. Routine screening and laboratory examinations shall be obtained when such are determined warranted by the physician.

55.702 Within 30 days after services are initiated by the agency, the following screenings shall be scheduled if the need for such is identified by the physician, person, advocate, guardian or team:

- a. Nutritional;
- b. Visual;
- c. Auditory;
- d. Speech and language;
- e. Occupational therapy;
- f. Physical therapy;
- g. Assistive technology;

h. Other screenings as identified.

55.703 When requested by the person, advocate, guardian or team or when indicated by the screening results, the person shall receive a comprehensive evaluation in the area(s) within 90 days.

55.704 Each person shall have his/her own toothbrush which is used regularly and stored antiseptically.

55.705 Persons shall be supported, to the extent possible, to attend to their own health care needs by making medical and dental appointments, cooperating in receiving medical and dental treatment and in self-administering their medications.

55.706 The Neighborhood Home provider shall have policies and procedures for infection control as it pertains to persons, staff, and visitors. Upon confirmation of reportable disease, the appropriate County Health Officer of the Division of Public Health shall be notified.

55.707 The Neighborhood Home provider shall have on file results of tuberculin tests:

a. Performed annually for all employees and volunteers, and

b. Performed on all newly admitted persons. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or admission, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement.

55.708 Each person's health and immunization history shall be updated continuously.

55.709 Persons who require adaptations of the environment or who use adaptive, corrective, mobility, orthotic, prosthetic, communication or other assistive devices or supports shall receive instruction in their proper use and shall receive professional assessments annually, or as otherwise prescribed, to ascertain the continued applicability and fitness of those devices or supports.

55.710 Adaptive, corrective, mobility, orthotic and prosthetic equipment shall be available, kept clean and in good repair and used as appropriate.

55.711 If any of the above supports are needed or used, the person's plan shall specify:

- a. the reason for each support;
 - b. the situations in which each is to be applied;
- and
- c. a schedule for the use of each support.

SECTION 55.8 - MEDICATIONS

55.801 Individuals receiving medication shall be instructed in self-administration to the limit of their

understanding. The Neighborhood Home Provider shall also include instruction in the purpose, dosage and possible side effects of the prescribed medication to the limit of the person's understanding.

55.802 Individuals who administer their own medication shall:

a. Understand the purpose of the medication, dosage times and possible side effects;

b. Know what to do if a dosage is missed, extra medication is taken or an adverse reaction is experienced;

c. Be educated in the maintenance of his/her own medication history and in the recording of information needed by the physician to determine medication and dosage effectiveness.

55.803 Medications shall be used only by the person for whom they were prescribed.

55.804 Injectable medication shall only be administered by licensed practical nurses, registered nurses or other licensed medical professionals.

55.805 Providers who have successfully completed a Board of Nursing approved Assistance with Self-Administration of Medication (AWSAM) training program may assist persons in the taking of medication, provided that the medication is in the original container and properly labeled. The medication shall be taken exactly as indicated on the label.

55.806 A medication record shall be maintained for each person. The record shall show the name and strength of each medication being taken by the person. Each dose administered shall be recorded by date, time and initials of person or persons assisting. Effectiveness shall be monitored by clinical support staff.

55.807 The Neighborhood Home Provider shall assist the person in reporting side effects to the physician who prescribed the medication. Suspected drug reactions shall be noted in the medication record and documented in the active file of the person.

55.808 All medication errors and corrective actions shall be documented and reported in accordance with provider written policy.

55.809 Serious medication errors and reactions to medication shall be reported immediately to the physician and to the Neighborhood Home provider's chief executive officer or to a person designated by written policy.

55.810 A three-day supply of medication shall be available at all times. All medication shall be stored in its original container either from the pharmacy, physician or manufacturer with the proper label and specific directions for assistance.

55.811 Medications to be applied externally shall be distinguishable from medications to be taken internally by means of packaging, labeling and segregation within storage areas.

55.812 Medication shall be stored and locked under

proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59 and 86 degrees Fahrenheit.

55.813 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36 and 42 degrees Fahrenheit.

55.814 A supply of over-the-counter medication shall be stocked at each home. However, the use of such medications must be authorized by the person's physician in writing, and their use documented in the medication record and in the person's active file.

55.815 Discontinued and outdated medications and containers with illegible or missing labels shall be promptly disposed of in a safe manner.

SECTION 55.9 - PERSONS' RECORDS

55.901 A cumulative record containing all information and documents related to supporting and providing services to the person shall be maintained chronologically for each person.

55.902 The record shall be readily accessible to those who require such access in order to provide services as described in the person's support plan.

55.903 All information concerning a person served, including information contained in an automated data bank, is confidential; and access shall be limited to staff who need to see the record, or to persons specifically authorized by the person or legally qualified representatives.

55.904 Entries in a person's record referring to actions with another person shall be coded in such a way as to protect the confidentiality of the persons served.

55.905 The provider shall be responsible for the safekeeping of each person's record and for securing it against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.

55.906 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's family or guardian, attending physician and DDDS or law enforcement authorities when appropriate. Incident reports shall be kept on file by the provider. Reportable incidents shall be communicated immediately to the Division of Developmental Disabilities Services.

SECTION 55.10 - TRANSPORTATION

55.1001 The transportation system operated by, or under contract to, the home shall meet local and state licensing, inspection, insurance, and capacity requirements.

55.1002 Vehicles used to transport persons shall be equipped with a seat belt for each person and a means of communication. Vehicles used to transport persons with physical impairments shall be adapted to their needs.

55.1003 Drivers of vehicles shall have valid and appropriate driver's licenses.

55.1004 Emergency transportation shall be available on a 24-hour basis.

55.1005 The provider shall provide or arrange transportation for a person's routine medical and dental care.

Section 55.11 - SAFETY AND SANITATION

55.1101 The Neighborhood Home's program shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, sanitation and plumbing.

55.1102 The provider shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations. The provider shall document actions taken to correct deficiencies noted in these reports.

55.1103 The provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.

55.1104 Hot water at shower, bathing and handwashing facilities shall not exceed 115 degrees F.

55.1105 There shall be adequate, safe and separate areas of storage of:

- a. Food items;
- b. Cleaning agents, disinfectants and polishes;
- c. Poisons, chemicals and pesticides;
- d. Eating, serving and cooking utensils;
- e. Clean and dirty linen.

55.1106 Firearms shall be prohibited on the premises of the Neighborhood Home.

55.1107 Active attention shall be directed to avoiding hazards to the people supported, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, scalding water or broken glass. However, people shall be prepared for and progressively exposed to routine risks that are likely to be encountered in normal environments.

SECTION 55.12 - BEDROOMS

55.1201 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.

55.1202 Sleeping rooms shall have an outside window and must provide for quiet and privacy. Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

55.1203 Bedrooms shall have walls that extend from

floor to ceiling, and shall accommodate no more than two persons.

55.1204 Multi-bed bedrooms shall provide at least 75 square feet per person.

55.1205 Single-bed bedrooms shall contain at least 100 square feet.

55.1206 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

55.1207 Each person shall have a bed suitable for his or her physical stature and condition.

55.1208 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient support and warmth.

55.1209 The use of hospital-type beds, plastic or other materials to keep beds and pillows dry, flat pillows or the absence of pillows or other departures from normalcy shall be justified in each case in the person's record and reviewed at least annually.

55.1210 There shall be a sturdy bedside stand, chair, a desk or table, and reading light for the person.

55.1211 Each bedroom window shall have a window treatment that closes for privacy.

55.1212 People shall be encouraged, and assisted as needed, to decorate their bedrooms as they choose.

SECTION 55.13 - BATHROOMS

55.1301 There shall be private toilet facilities with a shower or tub in good repair in each home. These facilities shall be accessible to the person according to his/her needs and shall facilitate maximum independence.

55.1302 Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

55.1303 There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.

55.1304 Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped persons, as dictated by such persons' needs.

55.1305 There shall be at least one (1) toilet of appropriate size for each four (4) persons. Each toilet shall be equipped with a toilet seat and toilet tissue.

55.1306 There shall be at least one (1) wash basin for each four (4) persons.

55.1307 There shall be at least one (1) tub or shower for each four (4) persons.

55.1308 Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

55.1309 Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant floor surfaces.

SECTION 55.14 - EMERGENCIES AND DISASTERS

55.1401 Fire safety in Neighborhood Homes shall comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction.

All applications for a license or renewal of a license shall include a letter certifying compliance by the Fire Marshal with jurisdiction. Notification of non-compliance with the applicable rules and regulations shall be grounds for revocation of a license.

55.1402 The home shall have a minimum of two means of egress.

55.1403 The home shall have an adequate number of UL approved smoke detectors in working order.

a. In a single level home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the home.

b. In a multi-story home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the home.

55.1404 There shall be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the home that is readily accessible, visible and mounted on the wall. Inspections shall be completed by the service company or as regulated by the Fire Marshal. Each extinguisher shall be checked annually.

55.1405 The provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing persons; and such procedures shall be communicated to all staff.

55.1406 The procedures shall assign specific personnel to specific tasks and responsibilities.

55.1407 The procedures shall contain instructions related to the use of alarm and signal systems. Provisions shall be made to alert persons living in the home according to their abilities, and these provisions shall be included in the procedures.

55.1408 Evacuation routes and the location of fire-fighting equipment shall be posted in areas used by the public as required by the applicable fire safety regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of persons and staff.

55.1409 The provider shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.

55.1410 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.

55.1411 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.

SECTION 55.15 - EVACUATION DRILLS

55.1501 Drills shall be held quarterly for each shift with

one drill per calendar month. Evacuation drills shall be held on different days, at different times, including times when people are asleep.

55.1502 The location of egress during these evacuation drills shall be varied, with window evacuation procedures discussed as an alternative, if not practiced.

55.1503 During drills, persons shall be evacuated with staff assistance to the designated safe area outside of the home.

55.1504 As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all persons and staff are familiar with the evacuation requirements and procedures. Any problems persons have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.

55.1505 Persons who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance shall be either relocated or provided with additional assistance.

SECTION 55.16 - WAIVERS OF STANDARDS

55.1601 Specific standards may be waived by the Division of Long Term Care Residents Protection provided that each of the following conditions is met:

a. Strict enforcement of the standard would result in unreasonable hardship on the provider.

b. The waiver is in accordance with the particular needs of the person.

c. A waiver must not adversely affect the health, safety, welfare, or rights of any person.

55.1602 The request for a waiver must be made to the Division of Long Term Care Residents Protection in writing by the provider with substantial detail justifying the request. The Division of Long Term Care Residents Protection will inform the provider of its decision within 30 days of receipt of the written request.

55.1603 A waiver granted by the Division of Long Term Care Residents Protection is not transferable to another Neighborhood Home provider in the event of a change in ownership.

55.1604 A waiver shall be granted for a period up to the term of the license.

55.1605 Person capacity for a Neighborhood Home may be waived from five to six persons where the physical plant, staffing, and person needs justify such an increase.

SECTION 55.17 - SEVERABILITY

55.1701 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

Adopted //03

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE**State-Funded Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS), publishes this notice of proposed changes to the State-funded medical assistance program. The proposed changes in the Division of Social Services Manual (DSSM) amends the rules used to determine eligibility for the State-funded medical assistance program in order to sustain the current program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed changes must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary Of Proposed Changes

Effective September 1, 2003, the State-funded medical assistance coverage is limited to those aliens who meet the following residency requirements:

- In order to be found eligible for the State-funded benefits, a legally residing nonqualified alien or a qualified alien must have resided in Delaware for at least three (3) consecutive months before he or she may be found eligible; and,
- A legally residing nonqualified alien or a qualified alien cannot use inpatient days in an institution to help establish this three (3) month residency requirement.

REVISIONS:**14300 Citizenship And Alienage**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United

States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated State only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of State funding. In the event State funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens are not eligible for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

Medicaid coverage for legally residing nonqualified aliens, qualified aliens subject to the PRWORA 5 year bar, illegally residing aliens, and ineligible aliens is limited to emergency services and labor and delivery only as described in DSSM 14360.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the State funded benefits.

In order to be found eligible for the State funded benefits, a legally residing nonqualified alien or a qualified alien who is subject to the PRWORA 5 year bar, must have a current Delaware domicile and must have resided in Delaware for at least three (3) consecutive months before he or she may be found eligible. Documentation of three (3) consecutive months of Delaware residency is required for the eligibility determination. Documentation includes but is not limited to a lease or landlord statement, a mortgage statement or deed, or a Delaware drivers license.

A legally residing nonqualified alien or a qualified alien subject to the PRWORA 5 year bar cannot use inpatient days in an institution to help establish this three (3) month residency requirement. This includes but is not limited to institutions such as inpatient hospitals, long term care facilities, residential treatment centers, inpatient substance abuse facilities, and institutions for mental diseases.

14320.1 Medicaid Eligibility For Qualified Aliens (PRWORA and/Or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of State funds. In the event such State funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive State funded benefits. The adult expansion population under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the State funded benefits.

The Delaware legislature appropriated State only funds to provide full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 are subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the PRWORA 5-year bar is subject to the availability of State funds.

14320.5 Eligibility For State Funded Benefits (Qualified Aliens)

The following qualified aliens who enter the U.S. on or after 8/22/96 and are subject to the PRWORA 5 year bar may be found eligible for State funded benefits.

- Lawful permanent resident
- Aliens granted parole (parolees)
- Aliens granted conditional entry (conditional entrants)
- Battered immigrants

The adult expansion population under the 1115 demonstration waiver entitled, Diamond State Health Plan, is not eligible for the State funded benefits. State funded coverage does not include long term care.

Effective September 1, 2003, these aliens must meet a three (3) month residency requirement as described in DSSM 14300.

Once these aliens have been in the U.S. for five years, they may be found eligible for Medicaid.

14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be

found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The Delaware legislature appropriated State only funds to provide full coverage of Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of State funds. In the event such State funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1. The adult expansion population, under the 1115 demonstration waiver, entitled Diamond State Health Plan, is not eligible for state funded benefits.

Legally residing nonqualified aliens may be found eligible for State funded benefits. The adult expansion population under the 1115 demonstration waiver entitled, Diamond State Health Plan, is not eligible for the State funded benefits. State funded coverage does not include long term care.

Effective September 1, 2003, these aliens must meet a three (3) month residency requirement as described in DSSM 14300.

15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for

four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received ~~the 30 and 1/3 disregard~~ Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for recipients for 12 months after employment causes ineligibility. Effective September 1, 2003, this earned income disregard expires. Families who establish eligibility prior to September 1, 2003, will receive the 12 month earned income disregard. Families who establish eligibility on or after September 1, 2003, will not receive the 12 month earned income disregard.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

15200 Transitional Medicaid

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional

Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section.

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) included a modification to the length of the Transitional Medicaid period. The DABC waiver extended Transitional Medicaid benefits for up to 24 months. This waiver expired on September 30, 2002. DSS will use the option under Section 1931(b)(2)(C) of the Social Security Act to disregard all earned income for 12 months after employment causes ineligibility for a family under Section 1931. (See DSSM 15120.2.) Effective September 1, 2003, families eligible under Section 1931 will not receive this 12 month earned income disregard. Families who establish eligibility under Section 1931 prior to September 1, 2003, will receive the 12 month earned income disregard.

Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each. Families who establish eligibility for Transitional Medicaid prior to October 1, 2002, may be eligible for up to 24 months of Transitional Medicaid. These are families who establish eligibility for Transitional Medicaid under the DABC waiver authority. Families who establish eligibility for Transitional Medicaid on or after October 1, 2002 may be eligible for up to 12 months of Transitional Medicaid.

Families must meet the initial eligibility requirements described in this section to receive the first six months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need.

To continue to receive Medicaid for the second six months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

**Delaware 1999 Milestone Compliance Demonstration
For Kent And New Castle Counties
Demonstrating Adequate Progress toward Attainment of
the 1-Hour**

**National Ambient Air Quality Standard
for Ground-Level Ozone**

Submitted to:

US Environmental Protection Agency

By

Delaware Department of Natural Resources
and Environmental Control

June 2003

1. Title Of The Regulations:

DELAWARE 1999 MILESTONE COMPLIANCE DEMONSTRATION FOR KENT AND NEW CASTLE COUNTIES: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone.

2. Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document proposed herein is for the milestone year of 1999, and thus termed as Delaware's 1999 Milestone Compliance Demonstration.

3. Possible Terms Of The Agency Action:

None.

4. Statutory Basis Or Legal Authority To Act:

7 Del. C., Chapter 60 Section 6010.
Clean Air Act Amendments of 1990.

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

A public hearing will be held on June 26, 2003, beginning at 6:00 pm in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

Prepared By:

Frank F. Gao, Project Leader (302) 323-4542 May 14, 2003

Acronym List

AQM	Air Quality Management Section of DNREC
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DAWM	Division of Air and Waste Management of DNREC
DeIDOT	Delaware Department of Transportation
DNREC	Delaware Department of Natural Resources and Environmental Control
EID	Emission Inventory Development
EPA	United States Environmental Protection Agency
FMVCP	Federal Motor Vehicle Control Program
HPMS	Highway Performance Monitoring System
I/M	Inspection and Maintenance
LEV	Low Emission Vehicle
NAA	Nonattainment Area
NAAQS	National Ambient Air Quality Standard
NLEV	National Low Emission Vehicle
NOx	Oxides of Nitrogen
OAQPS	Office of Air Quality Planning and Standards of EPA
OTAG	Ozone Transport Assessment Group
OTC	Ozone Transport Commission
OTR	Ozone Transport Region
PCP	Planning and Community Protection Branch of DNREC
PEI	Periodic Emission Inventory
PERC	Perchloroethylene
RACT	Reasonably Available Control Technology
RPP	Rate-of-Progress Plan
RVP	Reid Vapor Pressure
SCC	Source Classification Code
SIC	Standard Industrial Classification
SIP	State Implementation Plan
TPD	Tons per day
TPY	Tons per year
VHB	Vanasse Hangen Brustlin, Inc.
VOC	Volatile Organic Compound

References

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.

2. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.

3. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.

4. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.

5. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, Ozone/Carbon Monoxide Branch*, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, February 18, 1994.

6. *Regulations Governing the Control of Air Pollution*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, March 1995.

7. *Procedures for Preparing Emissions Projections*. EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

8. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

9. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

10. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

11. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware,

November 1999.

12. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000.

Summary

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone standard. This document addresses Delaware's 1999 milestone year compliance demonstration regarding progress toward attainment of the 1-hour National Ambient Air Quality Standard for the ground-level ozone.

Under Sections 182(b)(1) and 182(d) of CAAA, Delaware is required (1) by 1996 to achieve a 15% reduction in emissions of volatile organic compounds (VOCs) from its 1990 level in the two nonattainment counties, (2) by 1999 to achieve an additional 9% reduction in emissions of either VOCs or oxides of nitrogen (NOx) from the 1990 levels. Under these requirements, the 1999 target levels of VOC and NOx emissions for the two nonattainment counties have been determined to be 110.21 tons per day (TPD) and 148.96 TPD, respectively. To achieve these targets, Delaware implemented numerous control measures over a large variety of VOC and NOx emission sources from 1990 to 1999. Delaware's 1999 periodic emission inventory (PEI), which has been recently compiled, shows that the 1999 inventoried VOC and NOx emissions in Kent and New Castle Counties are 88.69 TPD and 117.68 TPD, respectively. These inventoried VOC and NOx emissions are significantly lower than the required targets levels. Thus, Delaware demonstrates herein that its 1999 milestone for complying with VOC and NOx emission reductions has been successfully met.

1. Introduction**1.1 Background**

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants that pose public health risks and environmental threats. Delaware exceeds the standard for only one of these pollutants, i.e., the ground-level ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the threat of ozone. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations.

The CAAA classifies five nonattainment areas (NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In the order of increasing severity, they are marginal, moderate, serious, severe, and extreme. According to Section 181 of CAAA, attainment dates for individual areas depend on their nonattainment designations. The Philadelphia Consolidated Metropolitan Statistical Area (CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Generally, ground level ozone is not directly emitted to the atmosphere, but formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the presence of sunlight. Thus, VOC and NO_x are defined as two major ozone precursors. In order to reduce ozone concentrations in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NO_x emissions over several specified periods of years until the ozone standard is attained. This requirement for periodic emission reductions is termed as "rate of progress" toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit a State Implementation Plans (SIP) revision to the United States Environmental Protection Agency (EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NO_x emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware's rate of progress toward the attainment of ozone standard, they are termed as Delaware's Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NO_x emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware's periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except the 1993 PEI) to demonstrate whether Delaware meets its required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as milestone compliance demonstration (Reference

1).

Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.¹



This document is to demonstrate Delaware 1999 milestone year compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as "Delaware 1999 Milestone Compliance Demonstration."

1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with its consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for performing the work associated with the on-road mobile source emissions included in this document.

1. This map is adopted from Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, DAWM of DNREC, under the management of Raymond H. Malenfant, Program Manager. Ronald A. Amirikian, Planning Supervisor of the PCP Branch, is the project manager of this document. Frank F. Gao, Environmental Engineer of Airshed Assessment and Improvement Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to R. Amirikian or F. Gao, (302)739-4791, AQM, 156 South State Street, Dover, DE 19901.

2. Submittal and Summary of Delaware State Implementation Plans

2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of CAAA requires each state with ozone nonattainment areas to develop a comprehensive 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This "1990 base year emission inventory" is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996 (Reference 2, hereafter referred to as the 1990 Base Year Inventory). A summary document of the 1990 Base Year Emission Inventory is provided in Appendix A of this document.

The 1990 Base Year Inventory is categorized by five source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors (Appendix A). Since volatile organic compounds (VOC), nitrogen oxides (NOx) and carbon monoxide (CO) are precursors forming the ground level ozone, their emissions from these source sectors in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because the contribution of CO to ozone formation is considered insignificant and Delaware does not contain any CO nonattainment area, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for attainment of ozone standard. A summary of VOC and NOx emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

Table 1. Summary of VOC and NOx Emissions (in TPD) in 1990 Base Year Inventory*

Source Sector	Kent		New Castle	Total	NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.24	6.13	27.08	85.77	30.32	91.90
Stationary Area Sources	12.97	1.20	34.75	5.40	47.72	6.60
Off-Road Mobile Sources	3.49	7.89	16.67	18.78	20.17	26.67
On-Road Mobile Sources	13.07	10.62	35.28	27.06	48.35	37.68
Biogenic Sources**	32.46	0.00	17.51	0.00	49.97	0.00
Total Emissions	65.23	25.84	131.30	137.00	196.53	162.85

*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

** Biogenic NOx emissions are assumed to be negligible.

2.2 Delaware 1996 and 1999 Rate-of-Progress Plans

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996. This plan must describe how Delaware could achieve an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and thus is termed as the Delaware 1996 Rate-of-Progress Plan or 15% Rate-of-Progress Plan (RPP). Delaware developed the 1996 RPP and submitted it to EPA for approval in February 1995 (Reference 3, hereafter referred to as the 1996 RPP). A summary of the 1996 RPP is provided in Appendix B of this document.

In addition to the 15% VOC emission reduction, Section 182(d) of CAAA requires Delaware to submit a rate-of-progress plan, as a SIP revision, that will lead to VOC and/or NOx emission reductions of at least 3% per year between 1996 and 1999. These rate-of-progress emission reductions are based on the states' 1990 emission levels. This SIP revision for achieving VOC/NOx emission reductions in the 1997-1999 period is termed as "Delaware 1999 Rate-of-Progress Plan (RPP)" (Reference 4, hereafter referred to as the 1999 RPP). Delaware submitted the 1999 RPP to EPA for approval in December 1997, and amended the plan in June 1999. A summary of the 1999 RPP is provided in Appendix C of this document.

In the 1999 RPP, Delaware first established VOC

and NOx emission targets for the milestone year of 1999 to meet the rate-of-progress requirements specified in the CAAA. Delaware then presented relevant control measures being promulgated before the peak ozone season of 1999, and demonstrated that through these control measures the required VOC and NOx emission targets could be met in 1999. This subsection presents a brief discussion of the major contents of the 1999 RPP.

2.2.1 Delaware 1999 VOC and NOx Emission Targets

The rate-of-progress reductions in VOC and NOx emissions for the period of 1990 to 1999 are estimated from the 1990 baseline level. Before the 1999 VOC and NOx emission targets can be calculated, the 1990 base year emissions must be adjusted. First, Section 182(b)(1)(B) defines the baseline emissions as the total actual VOC emissions from all anthropogenic sources in the nonattainment areas. Thus, the 1990 Base Year Inventory VOC emissions in Table 1 must be modified to exclude emissions from biogenic sources and sources outside the nonattainment areas. In addition, emissions of perchloroethylene (PERC) were included in the 1990 Base Year Inventory because it was originally classified by EPA as a photochemically reactive VOC contributing to the formation of ozone. After Delaware's 1990 Base Year Inventory was compiled, EPA reclassified PERC as photochemically non-reactive. Therefore, PERC emissions need to be subtracted from the 1990 Base Year Inventory. The biogenic VOC emissions in the 1990 Base Year Inventory are 32.460 TPD and 17.510 TPD for Kent and New Castle Counties, respectively (Table 1). The PERC emissions in Kent County are 0.188 TPD, all from the area source sector. For New Castle County, the PERC emissions are 0.140 TPD from the point source sector and 0.388 TPD from the area source sector. Details of determination of the PERC emissions can be found in Appendix A of Reference 4. After this modification, the total 1990 VOC and NOx baseline emissions are 145.84 TPD and 162.85 TPD, respectively.

The second adjustment is for the on-road mobile source sector. According to Section 182(b)(1)(D) of CAAA, emission reductions resulted from the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990 are not creditable for achieving the rate-of-progress emission reductions in the 1999 RPP. Therefore, the 1990 baseline VOC and NOx emissions must be adjusted by removing the VOC and NOx emission reductions expected from FMVCP and RVP. Details of the adjustments are provided in Part 1 of Delaware 1999 RPP (Reference 4). For VOC emissions, the FMVCP/RVP adjustments for Kent and New Castle Counties are 3.48 TPD and 8.02 TPD, respectively. For NOx emissions, the FMVCP/RVP adjustments for Kent and New Castle Counties are 1.46 TPD and 2.49 TPD,

respectively. The results after these adjustments are the 1990 Baseline Emissions Adjusted to 1999, which are the basis for calculating the required rate-of-progress emission reductions and the emission targets for the milestone year 1999. The adjustments and results are summarized in Table 2.

Table 2. Delaware 1990 Baseline and Adjusted Baseline Inventory

	Kent		New Castle		Total	NAA
	VOC	NOx	VOC	NOx	VOC	NOx
1990 Base Year	65.23	25.84	131.30	137.00	196.53	162.85
Biogenic/PERC Adjustments	32.65	0.00	18.04	0.00	50.69	0.00
1990 Baselines	32.58	25.84	113.26	137.00	145.84	162.85
FHMV/RVP Adjustments	3.48	1.46	8.02	2.49	11.50	3.95
1990 Baselines adjusted to 1999	29.10	24.38	105.24	134.51	134.34	158.90

According to EPA's Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration (Reference 5), the following equation should be used for calculating emission targets for the milestone year of 1999:

$$ET_{1999} = ET_{1996} - ER_{1990-1999} - FT_{1996-1999} \quad (1)$$

where ET_{1999} = emission target for milestone year 1999, ET_{1996} = emission target for milestone year 1996, $ER_{1990-1999}$ = emission reduction based on the 1990 baseline adjusted to 1999 (in Table 2), and $FT_{1996-1999}$ = fleet turnover correction from 1996 to 1999. The fleet turnover correction accounts for the emission reductions from the gradual replacement of older pre-control vehicles by newer vehicles with the control required by the CAAA. These fleet turnover reductions cannot be used for achieving rate-of-progress emission targets (Reference 5). Therefore, the emission reductions due to any fleet turnover during the post-1996 milestone periods are not creditable for the corresponding milestone year.

Details of using Eq. (1) to calculate the 1999 rate-of-progress VOC and NOx emission targets have been provided

in Delaware 1999 RPP, as amended in June 1999 (Reference 4). The emission targets of 1999 for the entire Delaware nonattainment area are **110.21 TPD** and **148.96 TPD** for VOC and NO_x, respectively.

2.2.2 Control Measures and Expected VOC/NO_x Emissions in 1999 RPP

To meet the 1999 VOC and NO_x emission targets determined in the previous subsection, Delaware has proposed numerous control measures in its 1999 RPP. The control measures include federal mandatory rules and Delaware's regulations to be promulgated prior to the peak ozone season of 1999 (Reference 4). These rules and regulations cover a large variety of VOC and NO_x emission sources in all baseline source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations have been presented in Delaware 1999 RPP, as amended in June 1999 (Reference 4), and Delaware Regulations Governing Control of Air Pollution (Reference 6).

Table 3. Control Measures Proposed in Delaware's 1999 RPP

Control Measures and Regulations	Creditability	Effective Date
Point Source Controls		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Surface Coating of Metal Furniture	Creditable	31-May-95
Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	Creditable	31-May-95
New RACT Regulations:		
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	31-Dec-95
SOCMI Reactor Processes and Distillation Operations	Creditable	01-Apr-96
Batch Processing Operations	Creditable	01-Apr-96
Offset Lithography	Creditable	01-Apr-96
Aerospace Coatings	Creditable	01-Apr-96
Industrial Cleaning Solvents	Creditable	29-Nov-94
Non-CTG RACT	Creditable	31-May-95
Delaware NO _x RACT	Creditable	31-May-95
Regional NO _x Control OTC MOU	Creditable	01-May-99

Federal Benzene Waste Rule	Creditable	Spring 1995
Sanitary Landfills	Creditable	09-Oct-93
Irreversible Process Changes	Creditable	01-Jan-96
Stationary Area Source Controls		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Cutback Asphalt	Creditable	31-May-95
New RACT Regulations:		
Stage IV Vapor Recovery-Gasoline Dispensing Facilities	Creditable	15-Nov-94
Emulsified Asphalt	Creditable	31-May-95
Motor Vehicle Refinishing	Creditable	01-Apr-96
Offset Lithography	Creditable	01-Apr-96
Aerospace Coatings	Creditable	01-Apr-96
Stage II Vapor Recovery	Creditable	15-Nov-94
Open Burning	Creditable	08-Feb-95
Off-Road Mobile Source Controls		
Reformulated Fuel	Creditable	01-Jan-95
New Emission Standards		
Spark Ignition Engines	Creditable	Court-Ordered
Compression Ignition Engines	Creditable	Court-Ordered
Marine Engines	Creditable	Court-Ordered
On-Road Mobile Source Controls		
FMVCP and RVP	Noncreditable	Pre-1990
Tier I Vehicle Emissions Standards	Creditable	Model Year 1994
a. Basic I/M for Kent County	Creditable	01-Jan-91
b. ATP and Pressure Test for Kent	Creditable	01-Jan-95
ATP and Pressure Test for New Castle	Creditable	01-Jan-95
Reformulated Fuel	Creditable	01-Jan-95

In the 1999 RPP, Delaware also projects the 1999 VOC and NO_x emissions in the peak ozone season assuming all control measures listed in Table 3 could be implemented as expected. The projections are termed as "control strategy projections" and conducted following the methods and procedures specified in EPA's guidance documents (References 7, 8 and 9). In the projection calculations,

factors such as growth, control efficiency, rule effectiveness, and rule penetration, are considered and incorporated whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources are conducted using EPA's MOBILE5a software. Details of the control strategy projections are presented in the 1999 RPP (Reference 4). A summary of the 1999 VOC and NO_x control strategy emission projections is given in Table 4.

Table 4. Delaware 1999 Control Strategy Projections for VOC and NO_x Emissions (TPD)

Source Sector	Kent		New Castle		Total	NAA
	VOC	NO _x	VOC	NO _x	VOC	NO _x
Point Sources	1.28	5.03	21.33	67.06	22.61	72.09
Stationary Area Sources	10.25	0.96	28.00	4.72	38.25	5.68
Off-Road Mobile Sources	3.44	8.27	15.87	19.17	19.31	27.43
On-Road Mobile Sources	7.55	10.27	22.49	28.51	30.04	38.78
Total Emissions	22.51	24.52	87.69	119.46	110.21	143.98

As shown in Table 4, the total VOC and NO_x emissions projected for 1999 in Delaware's nonattainment area (Kent and New Castle Counties) are 110.21 TPD and 143.98 TPD, respectively. The VOC projection is equal to the emission target, while the NO_x projection is lower than the target (148.96 TPD). Therefore, the 1999 RPP concludes that its proposed control measures are adequate and enough for Delaware to meet CAAA's rate-of-progress requirements on VOC and NO_x emission reductions in the milestone year of 1999.

2.3 Delaware 1993, 1996 and 1999 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from the subject year activity data obtained from relevant sources or other agencies (e.g., area sources). These periodic emission inventories cover all sources included in Delaware 1990 Base Year Emission Inventory. Delaware's 1993 periodic emission inventory (PEI) was submitted to EPA as a SIP

revision in January 1998 (Reference 10). A summary of the 1993 PEI is provided in Appendix D of this document. Delaware's 1996 PEI was completed and submitted to EPA in November 1999 (Reference 11). A summary of the 1996 PEI is provided in Appendix E of this document. Delaware's 1999 PEI was completed and its summary was submitted to EPA in June 2002.

Emissions in the periodic emission inventories are reported in tons per year (TPY) and in tons per day (TPD) in the peak ozone season. For the purpose of this document, only daily emissions (TPD) are needed. A summary of the 1993, 1996, and 1999 PEIs is presented in Table 5. In the next section, the 1999 emission data in Table 5 will be used to conduct the 1999 milestone compliance demonstration.

Table 5. Summary of Delaware's 1993, 1996 and 1999 Periodic Emission Inventories (TPD)

Source Sector	1993 PEI		1996 PEI		1999 PEI	
	VOC	NO _x	VOC	NO _x	VOC	NO _x
Point Sources	27.77	95.57	14.98	44.48	13.01	50.50
Stationary Area Sources	47.02	9.18	32.21	5.33	24.09	6.67
Off-Road Mobile Sources	20.50	26.80	21.08	27.03	20.76	23.23
On-Road Mobile Sources	40.51	41.25	33.61	44.72	30.83	37.28
TOTAL EMISSIONS	135.80	172.80	101.87	121.55	88.69	117.68

2.4 Delaware 1996 Milestone Compliance Demonstration

As mentioned earlier, under Sections 182(d) of CAAA, Delaware was required to achieve in 1996 an actual VOC emission reduction of at least 15% from its 1990 VOC emission level. After Delaware finished its 1996 PEI in November 1999, Delaware developed its 1996 milestone compliance demonstration SIP in February 2000, in which Delaware demonstrated that its 1996 VOC emission target was successfully met (Reference 12). A copy of the 1996 Milestone Demonstration is provided in Appendix F of this document. The main results of the 1996 demonstration document are presented in Table 6. As indicated in Table 6, the 1996 PEI VOC emission is 101.87 TPD, which is 12.0% lower than the 1996 VOC emission target required by CAAA. Therefore, the 1996 compliance with the rate-of-progress emission reduction requirement is successfully

demonstrated.

Table 6. 1996 Milestone Compliance Demonstration Results*

Emission (TPD)	1996 Required Emission Target	1996 Control Strategy Projection	1996 PEI Actual Emission
VOC	115.81	115.37	101.87

*Data obtained from Reference 12.

3. Delaware 1999 Milestone Compliance Demonstration

3.1 Milestone Compliance Demonstration

In the 1999 RPP, Delaware determined that the 1999 targets of VOC and NOx emissions for its nonattainment area (i.e., Kent and New Castle Counties) were 110.21 TPD and 148.96 TPD, respectively, in the peak ozone season. The 1999 RPP also assessed that, through implementing necessary emission control measures proposed therein, these emission targets could be achieved. In the 1999 PEI, Delaware has shown that the actual total VOC and NOx emissions in 1999 are 88.69 TPD and 117.68 TPD, respectively, in the peak ozone season. The 1999 emission targets and the 1999 PEI actual emissions are summarized in Table 7. As indicated in Table 7, both actual VOC and NOx emissions in the 1999 PEI are lower than the required emission targets. Therefore, Delaware demonstrates herein that its 1999 milestone compliance for VOC and NOx emission reductions under CAAA's rate-of-progress requirements has been successfully met.

Table 7. Milestone Compliance Demonstration for 1999

Emission (TPD)	1999 Required Emission Target	1999 PEI Actual Emission	PEI vs. Target* Lower(-)/Higher(+)
VOC	110.21	88.69	-19.5%
NOx	148.96	117.68	-21.0%

*(1999 PEI – 1999 Target)/1999 Target

4. Documentation

APPENDIX A. Summary of Delaware's 1990 Base Year Emission Inventory

APPENDIX B. Summary of Delaware's 1996 (15%) Rate-of-Progress Plan

APPENDIX C. Summary of Delaware's 1999 Rate-of-Progress Plan and Its amendments APPENDIX D. Summary of Delaware's 1993 Periodic Emission Inventory

APPENDIX E. Summary of Delaware's 1996 Periodic Emission Inventory

APPENDIX F. Delaware's 1996 Milestone Compliance Demonstration

(Hard copies of these appendixes are available upon request. Written requests should be addressed to Mr. R. Amirikian, Planning Supervisor, PCP-AQM-DAWM, DNREC, 156 South State Street, Dover, DE 19901, or at e-mail address: ronald.amirikian@state.de.us. The documents can be also obtained from DNREC's website at http://www.dnrec.state.de.us/air/aqm_page/aqm_nets.htm).

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

1. Title Of The Regulations:

AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION For The Philadelphia-wilmington-trenton Ozone Non-attainment Area Including a Revision of the 2005 Mobile Source Emission Budgets Using MOBILE6.

2. Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to develop and submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate its capability of attaining the 1-hour ozone National Ambient Air Quality Standard in 2005. This SIP revision, termed as the Phase II Attainment Demonstration, was originally developed and submitted to EPA in May 1998. The SIP revision was amended in January 2000, December 2000, and July 2001. The purpose of this action is to amend the Phase II Attainment Demonstration to reflect changes in the 2005 mobile source emission budgets using the new MOBILE6 emission model. No other changes to the plans are proposed.

3. Possible Terms Of The Agency Action:

None.

4. Statutory Basis Or Legal Authority To Act:

7 Del. C., Chapter 60, Environmental Control Clean Air Act Amendments of 1990

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

A public hearing will be held on June 26, 2003 beginning at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, May 14, 2003

AMENDMENTS TO**Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton****Ozone Non-Attainment Area****Including A****Revision of the 2005 Mobile Source Emission Budgets Using MOBILE6**

Submitted To

U.S. Environmental Protection Agency

By

Delaware Department of Natural Resources and Environmental Control
Dover, Delaware

June 2003

List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, and July 2001.

3. *Memorandum: Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity*, from John S. Seitz, Director of Office of Air Quality Planning and Standards, and Margo T. Oge, Director of Office of Transportation and Air Quality, US EPA, Washington D.C., January 18, 2002.

4. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, January 2000.

5. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

6. *Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, as proposed

in June 2003.

7. *64 FR 70444, December 16, 1999*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; proposed rule.

8. *66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

9. *Memorandum: Clarification of Policy Guidance for MOBILE6 SIPs in Mid-Course Review Areas*, from T. Helms and L. Cook, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, February, 2003.

1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures for VOC and NOx emission sources. That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended three times thereafter (Reference 2).

One requirement of EPA for a state's attainment demonstration SIP revision is to set up on-road motor vehicle VOC and NOx emission budgets for use in transportation conformity analysis in that state. In its amendments to the Phase II Attainment Demonstration SIP in January 2000, Delaware set up these two budgets for 2005 using EPA's MOBILE5b model and including MOBILE5-based Tier 2 benefits. In its amendments to the Phase II Attainment Demonstration SIP in December 2000, Delaware committed that it would revise the budgets within one year after the release of the then-anticipated MOBILE6 model. In January 2002, EPA officially released the MOBILE6 model.

The document proposed herein is to use MOBILE6 model to revise the on-road motor vehicle VOC and NOx emission budgets in Delaware Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali

Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Planning Supervisor. The following staff members of PCP are responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer
Principal Author and Project Leader

Philip Wheeler, MRP, Environmental Planner
Lead person for MOBILE6 modeling

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail Frank.Gao@state.de.us, or P. Wheeler at (302)739-4791, e-mail Philip.Wheeler@state.de.us, Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, DE 19901.

2. Requirements from EPA on Use of MOBILE6 Model

In January 2002, EPA officially released the MOBILE6 model for states to use in their ozone SIP revisions and transportation conformity analysis. In a policy guidance regarding the use of MOBILE6 model (Reference 3), EPA requires that, if a state used MOBILE5-based Tier 2 benefits when it determined its previous on-road motor vehicle emission budgets, the state must revise those budgets within one year after MOBILE6 is released, and submit the revised budgets to EPA as a SIP revision. Since Delaware used the MOBILE5-based Tier 2 benefits in its last mobile budget SIP submittal, Delaware needs to meet this requirement upon the MOBILE6 release (See also References 7 and 8).

According to the same guidance, Delaware can revise its motor vehicle emission budgets using MOBILE6 without revising the entire Phase II Attainment Demonstration SIP or completing additional modeling, if Delaware can satisfy the following two criteria: (1) the SIP continues to demonstrate attainment when the MOBILE6 is used to estimate motor vehicle emissions and to set up new emission budgets, and (2) the growth and control strategy assumptions for stationary sources and non-road mobile sources continue to be valid to maintain the overall conclusions of the SIP.

Delaware has decided not to revise the entire Phase II Attainment Demonstration SIP and not to conduct additional modeling. The second criterion above can be satisfied by the following two documents: (1) Delaware 1996 Milestone Demonstration for Kent and New Castle Counties (Reference 4), and (2) Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties (Reference 6). In these two documents, Delaware has successfully demonstrated that the overall emissions of VOC and/or NOx in the 1996 and 1999 Periodical Emission

Inventories are below the rate-of-progress emission targets for these two milestone years, which indicates continuous adequate progress toward the attainment of the 1-hour ozone standard in 2005.

In the following sections of this document, Delaware will show that EPA's first criterion will be satisfied by demonstrating that the MOBILE6 estimates of motor vehicle emissions are equal to or lower than the previous MOBILE5 estimates for the attainment year of 2005, and that the percentage changes in on-road motor vehicle emissions when using MOBILE6 are the same or higher than the percentage changes calculated using MOBILE5.

3. MOBILE6 Estimates of On-Road Mobile Source Emissions

The MOBILE6 modeling has been conducted in-house cooperatively by staff members of DNREC Air Quality Management Section and DeIDOT Division of Planning. The modeling includes all control measures specified in Delaware's 2005 Rate-of-Progress Plan (Reference 5). Using the emission factors generated by MOBILE6 and the latest planning assumption (i.e., the 2002 vehicle registration data, VMT/speed data) currently available to the responsible agencies (DNREC and DeIDOT), the MOBILE6-based motor vehicle emissions can be calculated. A detailed summary of MOBILE6-based emission estimates is presented in Appendix A of this document. The MOBILE6 model input files, output files, the emission factors generated by MOBILE6, and the emission calculations are provided in Appendix B of this document. The MOBILE6 estimates of on-road motor vehicle emissions in the attainment year 2005 are summarized in Table 1.

Table 1. MOBILE6 Estimates of On-Road Motor Vehicle Emissions in 2005.

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emissions (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

*NAA: Non-Attainment Area.

4. Comparison of MOBILE6-Based Estimates and MOBILE5-Based Estimates

The MOBILE5-based estimates of on-road motor vehicle emissions in 2005 are presented in Table 2. These estimates are also the on-road motor vehicle emission budgets as specified in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). Details of how Delaware conducted MOBILE5 modeling work and obtained these estimates are provided in Delaware's 2005 Rate-of-Progress Plan (Reference 5).

Table 2. MOBILE5 Estimates of On-Road Motor Vehicle Emissions in 2005.

Attainment Year	Kent County		New County Castle		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005	4.84	7.91	14.76	22.92	19.60	30.83
Emission (TPD)						

*NAA: Non-Attainment Area.

** Estimates based on emission factors generated by MOBILE5b model.

Comparison of MOBILE6-based estimates and MOBILE5-based estimates can be made through the following steps.

(1) For the total non-attainment area (NAA), the MOBILE6-based VOC emission is 0.62 TPD higher than the MOBILE5-based VOC emission (20.22 – 19.60 = +0.62 TPD), while the MOBILE6-based NOx emission is 1.13 TPD lower than the MOBILE5-based NOx emission (29.70 – 30.83 = - 1.13 TPD).

(2) Delaware's 1990 baseline VOC and NOx emissions, as adjusted to the attainment year of 2005 using MOBILE6 model, are 128.46 TPD and 152.83 TPD, respectively (Appendix A). The ratio of VOC to NOx baseline emissions is

$$\text{VOC} : \text{NOx} = 128.46 : 152.83 = 1 : 1.19$$

Using the above VOC-to-NOx emission ratio, the 0.62 TPD VOC emission increase due to using MOBILE6 is equivalent to a 0.74 TPD NOx emission increase (0.62 x 1.19 = 0.74 TPD). This equivalent NOx emission increase is smaller than the 1.13 TPD NOx emission decrease as indicated in (1) above.

The above comparison indicates that in the attainment year of 2005, the new MOBILE6 estimates are lower than the MOBILE5 estimates previously presented in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2).

In February 2003, EPA issued a memorandum that provided additional clarifying guidance on how to demonstrate attainment when using MOBILE6-based estimates to replace MOBILE5-based estimates (Reference 9). According to this latest clarifying guidance, Delaware should compare the percentage changes in the on-road mobile source emissions between the 1990 base year and the attainment year of 2005. If the percentage changes in the on-road emissions when using MOBILE6 are the same or higher than the percentage changes based on MOBILE5, a shortfall is not indicated and Delaware's attainment demonstration SIP continues to demonstrate attainment.

The above-mentioned comparison is accomplished and summarized in Table 3. The MOBILE6 estimates in Table 3

are obtained from Appendix A of this document, while the MOBILE5 estimates are obtained from Delaware 2005 Rate-of-Progress Plan (Reference 5). As indicated in Table 3, the percentage changes in the on-road mobile emissions using MOBILE6 are 62.6% and 26.2% for VOC and NOx, respectively. The percentage changes using MOBILE5 are 58.3% and 18.1% for VOC and NOx, respectively. It is clear that percentage changes in both VOC and NOx emissions in the mobile sector are higher when using MOBILE6 than using MOBILE5, which indicates that Delaware continues to demonstrate attainment. Therefore, the first criterion specified in EPA's MOBILE6 guidance document (Reference 3) is satisfied. As mentioned in Section 2 of this document, the second criterion has been satisfied as well.

Table 3. Comparison of Percentage Changes in On-Road Mobile Emissions.

	Kent County		New Castle County		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
MOBILE6 Estimates						
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
2005 Attainment Year	5.14	8.42	15.08	21.28	20.22	29.70
% reduction	56.6%	8.9%	64.2%	31.4%	62.6%	26.2%
MOBILE5b Estimates						
1990 Base Year	12.89	10.62	34.07	27.04	46.96	37.66
2005 Attainment Year	4.839	7.905	14.76	22.92	19.60	30.83
% reduction	62.5%	25.6%	56.7%	15.2%	58.3%	18.1%

5. New MOBILE6-Based Motor Vehicle Emission Budgets

Since the two criteria specified in EPA's MOBILE6 guidance document (Reference 3) are satisfied, Delaware has decided to set the new MOBILE6-based estimates to be the new on-road motor vehicle emission budgets for Kent and New Castle Counties in the attainment year of 2005, as presented in Table 4. After EPA determines that mobile budgets established by this SIP revision are adequate, these budgets shall be used to determine the conformity of transportation plans and programs to the SIP (References 3, 7 and 8).

Table 4. New MOBILE6-Based Motor Vehicle Emission Budgets for 2005.

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
Budgets (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

* Non-attainment area.

Appendixes

Appendix A: Summary of MOBILE6-Based Emission Estimates

Inventory Title	Kent County		New Castle County		Total		NAA	
	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx
1990 Base Year Mobile Sector	11.84	9.24	42.16	31.03	54.00	40.27		
1990 Baseline Mobile Sector								
Adjusted to 1996	10.80	8.68	28.63	23.17	39.42	31.85		
Adjusted to 1999	9.51	7.98	24.20	21.40	33.71	29.38		
Adjusted to 2002	8.69	7.67	24.40	20.94	33.09	28.62		
Adjusted to 2005	7.90	7.32	23.07	20.34	30.97	27.66		
1990 Baseline All Sectors								
Adjusted to 2005*					128.46	152.83		
Emissions with controls								
1996	9.77	9.08	26.65	23.66	36.42	32.74		
1999	8.56	8.42	24.14	22.03	32.69	30.45		
2002	7.00	7.89	16.88	18.94	23.87	26.83		
2005**	5.14	8.42	15.08	21.28	20.22	29.70		

Notes:

* MOBILE6-based 1990 Baseline All Sector Adjusted to 2005 =

MOBILE5-based 1990 Baseline All Sector Adjusted to 2005 –

MOBILE5-based 1990 Baseline Mobile Sector Adjusted to 2005 +

MOBILE6-based 1990 Baseline Mobile Sector Adjusted to 2005

where MOBILE5-based data are obtained from Delaware 2005 Rate-of-Progress Plan (Reference 5).

** The 2005 emissions with controls are calculated using the 2002 vehicle registration data, daily Vehicle Miles Traveled (VMT) and speeds of vehicles on the FHWA Functional

Classes of Highways (as the latest planning assumptions currently available to DNREC and DelDOT).

Appendix B: MOBILE6 Input/Output Files and Emission Calculations

Due to the large volumes of the input and output files, hard and/or electric copies will be available only upon request. Written request should be addressed to Phil Wheeler at Philip.Wheeler@state.de.us or AQM-DNREC, 156 South State Street, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Sections 103 and 1902 (7 Del.C. §§103, 1902)

1. Title Of The Regulations:

Horseshoe Crab Regulations

2. Brief Synopsis Of The Subject, Substance And Issues:

This regulatory package consists of a comprehensive revision, re-titling, and re-numbering of Shellfish Regulations S-50 through S-61, plus new regulations specific to horseshoe crabs. This revision will create a stand-alone section in the Shellfish Regulations specific to horseshoe crabs. This regulatory package establishes a seasonal closure on horseshoe crab harvesting, proposes yearly harvest limits, defines what percentage of the total annual harvest may be taken in dredges prior to the seasonal closure, eliminates by-catch provisions, refines licensing and reporting requirements, sets limits on the amount of horseshoe crabs that may be used as bait in any one shellfish or finfish pot, and requires the use of bait saving devices when horseshoe crabs are used as bait in conch pots.

3. Possible Terms Of The Agency Action:

These regulations must, as a minimum, meet the compliance guidelines contained with the Horseshoe Crab Fishery Management Plan administered by the Atlantic States Marine Fisheries Commission.

4. Statutory Basis Or Legal Authority To Act:

7 Delaware Code, §103 and §1902

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on these proposed amendments and new regulations will be held at the Department of Natural Resources and Environmental Control Auditorium at 89 Kings Highway, Dover, DE at 7:30 PM on June 23, 2003. The record will remain open for written, faxed, or e-mailed comments until 4:30 PM June 30, 2003. E-mail should be addressed to Roy.Miller@state.de.us.

The following regulations are adopted pursuant to Title 7, Delaware Code, Chapters 1, 18, 19, 27, and 28.

~~2S-50~~ HC-1 Definitions

The following definitions shall apply to terms in Chapter 27, Title 7, Delaware Code relative to horseshoe crabs.

1) 'Dispose of said crabs properly' shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.

2) 'Personal, non-commercial use' shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of state.

3) 'Collect' shall mean to take live horseshoe crabs by any means other than by dredge.

4) 'Dredge' shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.

5) 'Bait saving device' shall mean any device that when so deployed in or on a pot reduces either the rate at which bait, meaning horseshoe crabs or parts thereof, must be replenished or reduces the number or quantity of horseshoe crabs used as bait.

HC - 2 Horseshoe Crabs As Bait In Pots: Conch Pots

(a) It shall be unlawful for any person to place more than one-half of a female horseshoe crab or one male horseshoe crab as bait in any type of pot on any one day in the waters of this State.

(b) It shall be unlawful for any person to fish with a conch pot that is not equipped with a bait saving device, provided that a horseshoe crab or parts thereof are used as bait.

~~S-54~~ HC-3 Seasons And Area Closed To Taking Horseshoe Crabs With Dredges

(a) It shall be unlawful for any person to collect or dredge or attempt to collect or dredge by means of a dredge horseshoe crabs from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on May 1 and continuing through midnight, June 30, next ensuing, except that It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates may to collect horseshoe crabs on Tuesday and Thursday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on June 30.

(b) It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on May 1 and continuing through

midnight, June ~~7~~ 30, next ensuing., ~~except that~~ It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on June 30, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates ~~to may~~ collect horseshoe crabs on Mondays, Wednesdays and Fridays from such private lands.

(c) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

(d) It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time prior to May 1 in any given year after during a calendar year after 35% of the annual quota of the date the Department determines the annual quota of horseshoe crabs are, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed."

S-52 HC-4 Requirement For Collecting Horseshoe Crabs For Persons Under 16

(a) It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe crabs as an alternate to a person with a valid commercial eel fishing license.

(b) It shall be unlawful for any person under the age of sixteen (16) years to possess ~~more than six (6)~~ any horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

S-53 HC-5 Number Of Persons Accompanying A Person With A Valid Horseshoe Crab Collecting Permit

(a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons under the age of 16 who are not required to have valid horseshoe crab commercial collecting permits.

(b) It shall be unlawful for any person 16 years of age or older who does not have a valid commercial horseshoe crab collecting permit, to assist any person with a valid commercial horseshoe crab collecting permit in the handling, loading or driving a vehicle used to transport horseshoe crabs collected by said horseshoe crab collecting permittee while within 300 feet of the shoreline of the water from which said horseshoe crabs are collected or the point on shore where said horseshoe crabs are landed from a vessel.

S-54 HC-6 Possession Limit Of Horseshoe Crabs, Exceptions

(a) Unless otherwise authorized, it shall be unlawful

for any person to possess ~~more than six (6)~~ a horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the prohibition on the possession limit of ~~six (6)~~ horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his/her and his/her alternate's previous week's harvest of horseshoe crabs with the Department in accordance with ~~S-57~~ HC-10. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

(c) It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

(d) Any person with both a valid commercial eel fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of ~~chapter 27, 7 Del. C. Chapter 27~~ and/or shellfish regulations pertaining to horseshoe crabs.

(e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

(f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

(g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.

(h) It shall be unlawful for any person to collect or attempt to collect more than 300 cubic feet of horseshoe crabs during any 24 hour period beginning at 12:01 AM and continuing through midnight next ensuing.

~~S-55~~ HC-7 Horseshoe Crab Dredging Restrictions

(a) It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

(b) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

(c) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing.

(d) It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit."

~~S-55-A~~ HC-8 Horseshoe Crab Dredge Permit Lottery

(a) The Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual commercial horseshoe crab permit shall be accepted by the Department until 4:30 PM December 31 or 4:30 PM on the Friday preceding if December 31 is a Saturday or Sunday. If an annual lottery is necessary it shall be conducted at 1:00 PM on January 1, or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware."

(b) To be eligible an applicant for a horseshoe crab dredge permit shall be the current holder of and oyster harvesting license issued by the Department."

Note: This regulation was adopted by order of the Secretary on March 4, 1997, as "S-55." However, with the adoption of a second S-55 ("Horseshoe Crab Dredging Restrictions") on February 11, 1998, this regulation has been designated as "~~S-55-A~~."

~~S-56~~ HC-9 Horseshoe Crab Sanctuaries

(a) All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning 12:01 a.m. on May 1 through midnight June 30.

(b) Any land owner(s) may register their land with the Department to be designated as a horseshoe crab sanctuary for a period to be specified by the land owner(s).

(c) It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary except as provided in ~~S-51~~ HC-3 (a)."

~~S-57~~ HC-10 Horseshoe Crab Reporting Requirements

(a) It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a weekly basis. Said weekly reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a weekly report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

(b) Any person who fails to submit a weekly report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department."

(c) In addition to the requirement to phone in weekly catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a

commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

S-59 HC-11 Horseshoe Crab Commercial Collecting Permit Eligibility And Renewal Requirements

(a) The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by April 1 each year. ~~Failure of~~ If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by April 1, ~~will limit their~~ forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in the future. ~~in the lottery process of subsection (b).~~

~~(b) When the total number of horseshoe crab commercial collecting permits drops to 45 or below, as of April 2 of any year, the Department may schedule a lottery to take place prior to April 30 of that year to allow the total number of horseshoe crab commercial collecting permits to increase to 50."~~

S-60 HC-12 Prohibitions; Sale Of Horseshoe Crabs

(a) It shall be unlawful for any person who collects or dredges horseshoe crabs, except a person with a valid horseshoe crab commercial collecting permit or a person with a valid horseshoe crab dredge permit, to sell, trade and/or barter or to attempt to sell, trade and/or barter any horseshoe crab."

S-61 HC-13 Collecting Horseshoe Crabs At Night, Prohibited

(a) It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise."

S-62 HC-14 Horseshoe Crab Annual Harvest Limit

(a) The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 150,000 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less.

(b) When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DELAWARE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code,
Section 6603 (16 **Del.C.** §6603)

ORDER

The State Fire Prevention Commission ("the Commission") held a properly noticed, public hearing on April 24, 2003 to receive comments on proposed additions, revisions, deletions, modifications and reservations to Commission Regulations. (Attached to this Order as "Exhibit A"). The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit "B" in lieu of a statement of the summary of the evidence. Similarly, those written comments received by the Commission and introduced into evidence at the hearing of the State Fire Marshal and other speakers are attached to this Order as Exhibit "C".

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. There was no public comment received concerning the following proposed regulations:

Part I, Annex A	Adopted NFPA Codes & Standards
Part I, Annex B	Additions, Deletions & Changes to Codes &

Part I, Chapter 2
Part II, Chapter 6

Part II, Chapter 7

Part III, Chapter 2

Part III, Chapter 3

Part III, Chapter 4

Part III, Chapter 5

Part III, Chapter 6

Part III, Chapter 7

Part III, Chapter 8

Standards Listed in Annex B except for National Electric Code
Definitions
Standard for Fire Flow for Fire Protection
Minimum Requirements for Water Suppliers
Sales & Servicing of Portable Fire Extinguishers
Standard for Fire Hydrant Maintenance, Inspection, Testing & Marketing
Licensing Regulations for Fire ALarm Signaling Systems
Licensing Regulations for Fire Suppression Systems
Licensing Regulations for Fire Alarm Signaling Systems In-House Licensee's
Licensing Regulations for Fire Suppression Systems In-House Licensee's
Licensing and Reporting Requirements for Central Station and Remote Station Services

Part IV, Chapter 2 Fireworks Display
 Part IV, Chapter 3 Explosive, Ammunition,
 Blasting Agents Part IV,
 Part V, Chapter 5 Standard for the Marking,
 Identification and Access-
 ibility of Fire Lanes, Exits,
 Fire Hydrants, Sprinkler, and
 Standpipe Connections
 Part V, Chapter 5 Figures 1 through 9

documents submitted especially the submission on behalf of the State Fire Marshal and witnesses in support of the changes.

IT IS SO ORDERED this 13th day of May, 2003.

STATE FIRE PREVENTION COMMISSION

Kenneth H. McMahan, Chairman
 W. (Bill) Betts, Jr., Vice-Chairman
 Carlton E. Carey, Sr.
 Frances J. Dougherty
 Robert Ricker
 Daniel W. McGee
 Dale Calloway

2. The National Electrical Code does not require that hard wired smoke detectors in dwelling unit bedrooms be placed on a circuit that cannot be interrupted. The State Fire Marshal's Office recommends that such smoke detectors be on a circuit dedicated to smoke detectors and physically protected from being inadvertently opened. The Commission heard opposition to this change based on the possible lack of notice to the occupant of a power failure to the detector, if the detector is not on a light circuit.

3. The present practice to collect fees for Certificates of Inspection are inefficient and/or ineffective and the proposed changes to Part III, Chapter I would remedy this. These changes would also help ensure quality services, provide resources, and assist public safety efforts by focusing on fire protection systems.

4. The Commission accepts the testimony in support of the changes to Part III, Chapter I, and notes that the only adverse comments questioned what activities were funded by the fees.

5. The requirement for "panic hardware" should indicate "13 or more clients" and this is a more favorable regulations for the regulated provider.

THE LAW

The State Fire Prevention Commission's rulemaking authority is provided by 19 Del., C. §6603 that states

"The State Fire Prevention Commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion. Such regulations, amendments or repealers shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for the fire prevention and fire protection and shall have the force and effect of law in the several counties, cities and political subdivision of the State.

DECISION

The Commission hereby adopts the Regulations as proposed with the alterations and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order. The Commission relies upon its expertise in this area and the evidence presented in the testimony and

**Part I, Annex A
 Adopted NFPA Codes & Standards
 Numerical Listing**

Each of the following Codes and Standards, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, are hereby adopted in their entirety with the exception of any changes, additions or deletions as listed in Annex B of these Regulations as a supplement and addition to the Delaware State Fire Prevention Regulations. The text of these adopted Codes and Standards shall be fully enforceable as provisions of these Regulations as if the same were incorporated and set forth at length herein. If a newer Code or Standard has been adopted and issued by the National Fire Protection Association, the State Fire Marshal may accept the newer Code or Standard as an alternative, provided that such Code or Standard affords an equivalent level of safety in the opinion of the State Fire Marshal. Where the Codes or Standards as listed herein, are updated versions of adopted Codes or Standards, the updated versions will replace the existing versions in these Regulations.

NFPA NO.	DATE OF PUBLICATION	TITLE
10 ¹	2002	Standard for Portable Fire Extinguishers
10R	1992	Portable Fire Extinguishing Equipment in Family Dwellings and Living Units, Recommended Practice for
11 ¹	2002	Standard for Low-Expansion Foam
11A ¹	1999	Standard for Medium- and High-Expansion Foam Systems
12 ¹	2000	Standard on Carbon Dioxide Extinguishing Systems
12A ¹	1997	Standard on Halon 1301 Fire Extinguishing Systems

13 ^{1,3}	2002	Standard for the Installation of Sprinkler Systems	35 ¹	1999	Standard for the Manufacture of Organic Coatings
13D ^{1,3}	2002	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	36 ¹	2001	Standard for Solvent Extraction Plants
			37 ¹	2002	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
13R ³	2002	Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height	40 ¹	2001	Standard for the Storage and Handling of Cellulose Nitrate Film
			40E	1993	Code for the Storage of Pyroxylin Plastic
14 ³	2000	Standard for the Installation of Standpipe, Private Hydrant and Hose Systems	42 ²	2002	Code for the Storage of Pyroxylin Plastic
			43B	1993	Code for the Storage of Organic Peroxide Formulations
			43D	1994	Code for the Storage of Pesticides in Portable Containers
15 ¹	2001	Standard for Water Spray Fixed Systems for Fire Protection	45 ¹	2000	Standard on Fire Protection for Laboratories Using Chemicals
16 ¹	1999	Standard for the Installation of Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems	50 ¹	2001	Standard for Bulk Oxygen Systems at Consumer Sites
16A	1994	Standard for the Installation of Closed Head Foam-Water Sprinkler Systems	50A ¹	1999	Standard for Gaseous Hydrogen Systems at Consumer Sites
17 ¹	2002	Standard for Dry Chemical Extinguishing Systems	50B ¹	1999	Standard for Liquefied Hydrogen Systems at Consumer Sites
17A ¹	2002	Standard on Wet Chemical Extinguishing Systems	51 ¹	2002	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
18	1995	Standard on Wetting Agents	51A ¹	2001	Standard for Acetylene Cylinder Charging Plants
20	1999	Standard for the Installation of Stationary Pumps for Fire Protection	51B ¹	1999	Standard for Fire Prevention During Welding, Cutting, and other Hot Work
22	1998	Standard for Water Tanks for Private Fire Protection	52 ¹	2002	Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems
24 ¹	2002	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	54 ^{1,3}	2002	National Fuel Gas Code
25 ¹	2002	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	55 ¹	2001	Standard for Compressed and Liquefied Gases in Portable Cylinders
30 ^{1,3}	2000	Flammable and Combustible Liquids Code	57 ¹	2002	Standard for Liquefied Natural Gas (LNG) Vehicular Fuel Systems
30A ^{1,3}	2000	Motor Fuel Dispensing Facilities	58 ^{1,3}	2001	Liquefied Petroleum Gases
30B ¹	2002	Code for the Manufacture and Storage of Aerosol Products	59 ¹	2001	Utility LP-Gas Plant Code
			59A ¹	2001	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)
31 ¹	2001	Standard for the Installation of Oil-Burning Equipment	61 ¹	2002	Standard for the Prevention of Fire and Dust Explosions in Agricultural and Food Products Facilities
32 ¹	2000	Standard for Drycleaning Plants	65	1993	Standard for the Processing and Finishing of Aluminum]
33 ¹	2000	Standard for Spray Application Using Flammable and Combustible Materials	68 ²	2002	Venting of Deflagrations, Standard of
34 ¹	2000	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids	69 ¹	2002	Standard on Explosion Prevention Systems
			70 ^{1,3}	2002	National Electrical Code

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72 ¹	2002	National Fire Alarm Code			Construction
73 ¹	2000	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	221 ¹	2000	Standard for Fire Walls and Fire Barrier Walls
75 ¹	1999	Standard for the Protection of Electronic Computer/ Data Processing Equipment	230	1999	Fire Protection of Storage
			231D	1994	Standard for Storage of Rubber Tires
76 ²	2002	Telecommunications Facilities	231F ¹	1996	Standard for the Storage of Roll Paper
79 ¹	2002	Electrical Standard for Industrial Machinery	232 ¹	2000	Standard for the Protection of Records
			241 ¹	2000	Standard for Construction, Alteration, and Demolition Operations
80 ¹	1999	Standard for Fire Doors and Windows			
82 ¹	1999	Standard on Incinerators, Waste and Linen Handling Systems and Equipment	302 ¹	1998	Fire Protection Standard for Pleasure and Commercial Motor Craft
86 ¹	1999	Standard for Ovens and Furnaces	303 ¹	2000	Fire Protection Standard for Marinas and Boatyards
86C ¹	1999	Standard for Industrial Furnaces Using a Special Processing Atmosphere	306 ¹	2001	Standard for the Control of Gas Hazards on Vessels
88A ¹	2002	Standard for Parking Structures			
88B	1997	Standard for Repair Garages	307 ¹	2000	Standard for the Construction and Fire Protection of Marine Terminals, Piers and Wharves
90A ¹	2002	Standard for the Installation of Air Conditioning and Ventilating Systems			
90B ¹	2002	Standard for the Installation of Warm Air Heating and Air Conditioning Systems	312 ¹	2000	Standard for Fire Protection of Vessels During Construction, Repair and Lay-up
91 ¹	1999	Standard for Exhaust Systems for Air Conveying Vapors, Gases, Mists, and Noncombustible Particulate Solids	326 ¹	1999	Standard Procedures for the Safeguarding Tanks and Containers
			327	1993	Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers Without Entry
92A ¹	2000	Recommended Practice for Smoke-Control Systems			
92B ¹	2000	Smoke Management Systems in Malls, Atria and Large Areas	385	1990	Standard for Tank Vehicles for Flammable and Combustible Liquids
			386	1990	Standard for Portable Shipping Tanks for Flammable and Combustible Liquids
96 ¹	2001	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	395 ³	1993	Standard for Storage of Flammable and Combustible Liquids on Farms and Isolated Sites
99 ^{1,3}	2002	Standard for Health Care Facilities			
101 ³	2000	Safety to Life from Fire in Buildings and Structures	407 ¹	2001	Standard for Aircraft Fuel Servicing
102	1995	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	408 ¹	1999	Standard on Aircraft Hand Portable Fire Extinguishers
			409 ¹	2001	Standard on Aircraft Hangars
			410 ¹	1999	Standard on Aircraft Maintenance
110 ¹	2002	Standard for Emergency and Standby Power Systems	415 ¹	2002	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
111 ²	2001	Stored Electrical Energy Emergency and Standby Power Systems	416	1993	Standard on Construction and Protection of Airport Terminal Buildings
120 ¹	1999	Standard for Coal Preparation Plants			
150 ¹	2000	Standard on Fire Safety in Race Track Stables	417	1990	Standard on Construction and Protection of Aircraft Loading Walkways
170 ¹	2002	Standard for Fire Safety Symbols	418 ¹	2001	Standard on Heliports
211 ¹	2000	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	430 ¹	2000	Code for the Storage of Liquid and Solid Oxidizers
214 ¹	2000	Standard on Water-Cooling Towers	434 ²	2002	Storage of Pesticides, Code for the
220	1999	Standard on Types of Building	480 ¹	1998	Standard for the Storage, Handling, and

		Processing of Magnesium-			Systems
481 ⁺	2000	Standard for the Production, Processing,	780 ¹	2000	Installation of Lightning Protection
		Handling and Storage of Titanium-			Systems
482	1996	Standard for the Production, Processing,	804 ¹	2001	Standard for Fire Protection for Advanced
		Handling, and Storage of Zirconium			Light Water Reactor Electric Generating
484 ²	2002	Standard for Combustible Metals, Metal			Plants
		Products and Metal Dusts	909 ¹	2001	Standard for the Protection of Cultural
490 ¹	2002	Code for the Storage of Ammonium			Resources
		Nitrate	1123 ¹	2000	Code for Fireworks Display
495 ¹	2001	Explosive Materials Code	1122 ¹	2002	Code for Model Rocketry
496 ¹	1998	Standard for Purged and Pressurized	1124 ¹	1998	Code for the Manufacturer, Transportation
		Enclosures for Electrical Equipment			and Storage of Fireworks and Pyrotechnic
498 ¹	2001	Standard for Safe Haven for Vehicles			Articles
		Transporting Explosives	1125 ¹	2001	Code for the Manufacture of Model
501A ¹	2000	Standard for Fire Safety Criteria for			Rocket and High Power Rocket Motors
		Manufactured Home Installations, Sites,	1126 ¹	2001	Standard for the Use of Pyrotechnics
		and Communities			before a Proximate Audience
501C ⁺	1996	Standard on Recreational Vehicles	1127 ¹	2002	Code for High Power Rocketry
501D ⁺	1996	Standard for Recreational Vehicle Parks	1142 ²	2001	Standard on Water Supplies for Suburban
		and Campgrounds			and Rural Fire Fighting
502 ¹	2001	Road Tunnels, Bridges, and Other Limited	1221 ¹	2002	Standard for the Emergency Services
		Access Highways			Communications
505 ¹	2002	Fire Safety Standard for Powered	1231	1993	Standard on Water Supplies for Suburban
		Industrial Trucks Including Type			and Rural Fire Fighting
		Designations, Areas of Use, Maintenance,	1961 ¹	2002	Standard on Fire Hose
		and Operation	1962 ¹	1998	Standard for the Care, Use, and Service
513	1994	Standard for Motor Freight Terminals			Testing of Fire Hose Including
560 ¹	2002	Standard for the Storage, Handling, and			Connections and Nozzles
		Use of Ethylene Oxide for Sterilization	1963 ¹	1998	Standard for Fire Hose Connections
		and Fumigation	2001 ¹	2000	Standard on Clean Agent Fire Extinguishing
650	1990	Standard for Pneumatic Conveying			Systems
		Systems for Handling Combustible			
		Materials			
651 ⁺	1998	Standard for the Manufacture of			
		Aluminum and Aluminum Powder			
654 ¹	2000	Standard for the Prevention of Fire and			
		Dust Explosions from Manufacturing			
		Combustible Particulate Solids			
655 ¹	2001	Standard for Prevention of Sulfur Fires			
		and Explosions			
664 ¹	2002	Standard for the Prevention of Fires and			
		Explosions in Wood Processing and			
		Woodworking Facilities			
703 ¹	2000	Standard for Fire-Retardant Impregnated			
		Wood and Fire-Retardant Coatings for			
		Building Materials			
704 ¹	2001	Standard for the Identification of the			
		Hazards of Materials			
750 ¹	2000	Standard on Water Mist Fire Protection			

(1) Indicates an Updated Document; (2) Indicates a Document New to the SFPR; and (3) Indicates a Document Amended in Annex B

Adopted NFPA Codes & Standards Alphabetical Listing

Each of the following Codes and Standards, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, are hereby adopted in their entirety with the exception of any changes, additions or deletions as listed in Annex B of these Regulations as a supplement and addition to the Delaware State Fire Prevention Regulations. The text of these adopted Codes and Standards shall be fully enforceable as provisions of these Regulations as if the same were incorporated and set forth at length herein. If a newer Code or Standard has been adopted and issued by the National Fire Protection

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Association, the State Fire Marshal may accept the newer Code or Standard as an alternative, provided that such Code or Standard affords an equivalent level of safety in the opinion of the State Fire Marshal. Where the Codes or Standards as listed herein, are updated versions of adopted Codes or Standards, the updated versions will replace the existing versions in these Regulations.

NFPA NO.	DATE OF PUBLICATION	TITLE			
					Standard for
			12 ¹	2000	Carbon Dioxide Extinguishing Systems, Standard on
			40 ¹	2001	Cellulose Nitrate Film, Standard for the Storage and Handling of
			654 ¹	2000	Chemical, Dye, Pharmaceutical, and Plastics Industries, Standard for the Prevention of Fire and Dust Explosions in the
51A ¹	2001	Acetylene Cylinder Charging Plants, Standard for	211	2000	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, Standard for
804 ¹	2001	Advanced Light Water Reactor Electric Generating Plants, Standard for Fire Protection for	2001 ¹	2000	Clean Agent Fire Extinguishing Systems, Standard on
			120 ¹	1999	Coal Preparation Plants, Standard for
30B ¹	2002	Aerosol Products, Code for the Manufacture and Storage of	484 ²	2002	Combustible Metals, Metal Products, and Metal Dusts, Standard for the Protection of
61 ¹	2002	Agricultural and Food Products Facilities, Standard for the Prevention of Fires and Dust Explosions in	37 ¹	2002	Combustion Engines and Gas Turbines, Standard for the Installation and Use of Stationary
90A ¹	2002	Air Conditioning and Ventilating Systems, Standard for the Installation of	96 ¹	2001	Commercial Cooking Operations, Standard for Ventilation Control and Fire Protection
90B ¹	2002	Air Conditioning Systems, Warm Air Heating and, Standard for the Installation of	55 ¹	2001	Compressed and Liquefied Gases in Portable Cylinders, Standard for the Storage, Use, and Handling of
415	1997	Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways, Standard on	52 ¹	2002	Compressed Natural Gas (CNG) Vehicular Fuel Systems, Standard for
407 ¹	2001	Aircraft Fuel Servicing, Standard for	241 ¹	2000	Construction, Alteration, and Demolition Operations, Standard for
408 ¹	1999	Aircraft Hand Portable Fire Extinguishers, Standard for	909 ¹	2001	Cultural Resources, Standard for the Protection of
409 ¹	2001	Aircraft Hangars, Standard on	16 ¹	1999	Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems, Standard for the Installation of
417	1990	Aircraft Loading Walkways, Standard on Construction and Protection of	34 ¹	2000	Dipping and Coating Processes Using Flammable or Combustible Liquids Standard
410 ¹	1999	Aircraft Maintenance, Standard on	17 ¹	2002	Dry Chemical Extinguishing Systems, Standard for
416	1993	Airport Terminal Buildings, Standard on Construction and Protection	32 ¹	2000	Dry-cleaning Plants, Standard for
651 ⁴	1998	Aluminum and Aluminum Powder, Standard for the Manufacture	1221 ¹	2002	Emergency Services Communications, Standard for the
65	1993	Aluminum, Standard for the Processing and Finishing of	560 ¹	2002	Ethylene Oxide for Sterilization and Fumigation, Standard for the Storage, Handling, and Use of
490 ¹	2002	Ammonium Nitrate, Code for the Storage of	70 ^{1,3}	2002	Electrical Code, National
30A ^{1,3}	2000	Automotive and Marine Service Station Code	496 ¹	1998	Electrical Equipment, Purged and Pressurized Enclosures, Standard for
220	1999	Building Construction, Standard for Types	73 ¹	2000	Electrical Inspection for Existing
703 ¹	2000	Building Materials, Standard for Fire-Retardant Impregnated Wood and Fire-Retardant Coatings			
50 ¹	2001	Bulk Oxygen Systems at Consumer Sites,			

		Dwellings	306 ¹	2001	Gas Hazards on Vessels, Standard for the Control of
79 ¹	1997	Electrical Standard for Industrial Machinery			
75 ¹	1999	Electronic Computer/Data Processing Equipment, Standard for the Protection of	50A ¹	1999	Gaseous Hydrogen Systems at Consumer Sites, Standard for
110 ¹	2002	Emergency and Standby Power Systems, Standard for	102	1995	Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures, Standard for
91 ¹	1999	Exhaust Systems for Air Conveying of Materials, Standard for	12A ¹	1997	Halon 1301 Fire Extinguishing Systems, Standard on
69 ¹	2002	Explosion Prevention Systems, Standard on	704 ¹	2001	Hazards of Materials, Standard for the Identification of the
495 ¹	2001	Explosive Materials Code	99 ^{1,3}	2002	Health Care Facilities, Standard for
498 ¹	2001	Explosives, Standard for Safe Havens for Vehicles Transporting	418 ¹	2001	Heliports, Standard for
72 ¹	2002	Fire Alarm Code, National	1127 ¹	2002	High Power Rocketry, Code for
80 ¹	1999	Fire Doors and Windows, Standard for	82 ¹	1999	Incinerators, Waste and Linen Handling Systems and Equipment, Standard for
10 ¹	2002	Fire Extinguishers, Portable, Standard for	86C ¹	1999	Industrial Furnaces Using a Special Processing Atmosphere, Standard for
40R	1992	Fire Extinguishing Equipment, Portable, in Family Dwellings and Living Units, Recommended Practice for	45 ¹	2000	Laboratories Using Chemicals, Standard on Fire Protection for
1961 ¹	2002	Fire Hose, Standard on	780 ¹	2000	Lightning Protection Systems, Installation of
1963 ¹	1998	Fire Hose Connections, Standard for			
1962 ¹	1998	Fire Hose Including Connections and Nozzles, Standard for the Care, Use, and Service Testing of	50B ¹	1999	Liquefied Hydrogen Systems at Consumer Sites, Standard for
230	1999	Fire Protection of Storage, Standard for the	59A ¹	2001	Liquefied Natural Gas (LNG), Standard for the Production, Storage, and Handling of
170 ¹	1999	Fire Safety Symbols, Standard for	57 ¹	2002	Liquefied Natural Gas (LNG) Vehicular Fuel Systems, Standard for
221 ¹	2000	Fire Walls and Fire Barrier Walls, Standard for	59 ¹	2001	Liquefied Petroleum Gases at Utility Gas Plants, Standard for Storage and Handling of
1124 ¹	1998	Fireworks and Pyrotechnic Articles, Code for the Manufacturer, Transportation and Storage of	58 ^{1,3}	2001	Liquefied Petroleum Gas Code
1123 ¹	2000	Fireworks Display, Code for	480⁺	1998	Storage, Handling, and Processing of Magnesium, Standard for the
30 ^{1,3}	2000	Flammable and Combustible Liquids Code	501A ¹	2000	Manufactured Home Installations, Sites, and Communities, Standard for Fire Safety Criteria for
395 ³	1993	Flammable and Combustible Liquids on Farms and Isolated Sites, Standard for Storage of	303 ¹	2000	Marinas and Boatyards, Fire Protection Standard for
386	1990	Flammable and Combustible Liquids, Portable Shipping Tanks, Standard for	307 ¹	2000	Marine Terminals, Piers and Wharves, Standard for the Construction and Fire Protection
385	1990	Tank Vehicles for Flammable and Combustible Liquids, Standard for			
11 ¹	2002	Foam, Standard for Low-Expansion	1125 ¹	2001	Model Rocket and High Power Rocket Motors, Code for the Manufacture of
11A ¹	1999	Foam Systems, Standard for Medium- and High-Expansion	1122 ¹	2002	Model Rocketry, Code for
46A	1994	Foam Water Sprinkler Systems, Closed-Head, Standard for the Installation of	302 ¹	1998	Pleasure and Commercial Motor Craft, Fire Protection Standard for
54 ^{1,3}	2002	Fuel Gas Code, National			

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31 ¹	2001	Oil-Burning Equipment, Standard for the Installation of	13D ^{1,3}	2002	Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, Standard for the Installation of
35 ¹	1999	Organic Coatings, Standard for the Manufacture of	13R ³	2002	Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height, Standard for the Installation of
43B	1993	Organic Peroxide Formulations, Standard for the Storage of			
86 ¹	1999	Ovens and Furnaces, Standard for	14 ³	2000	Standpipe, Private Hydrants and Hose Systems, Standard for Installation of
430 ¹	2000	Oxidizers, Code for Storage of Liquid and Solid	20	1999	Stationary Pumps for Fire Protection, Standard for the Installation of
88A ¹	2002	Parking Structures, Standard for	111 ²	2001	Stored Electrical Energy and Standby Power Systems
434 ²	2002	Pesticides, Code for the Storage of	655 ¹	2001	Sulfur Fires and Explosions, Standard for Prevention of
43D	1994	Pesticides in Portable Containers, Standard for the Storage of	327	1993	Tanks and Containers, Small, Standard Procedures for Cleaning or Safeguarding Without Entry
650	1990	Pneumatic Conveying Systems for Handling Combustible Materials, Standard for	326 ¹	1999	Tanks and Containers, Standard Procedures for the Safeguarding
505 ¹	2002	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operations, Standard for	513	1994	Terminals, Motor Freight, Standard for
24 ¹	2002	Private Fire Service Mains and Their Appurtenances, Standard for the Installation of	76 ²	2002	Telecommunications Facilities
1126 ¹	2001	Pyrotechnics before a Proximate Audience, Standard for the Use of	481 ⁺	2000	Titanium, Standard for the Production, Processing, Handling and Storage of
40E	1993	Pyroxylin Plastic, Code for the Storage of	68 ²	2002	Venting of Deflagrations, Standard of
42 ²	2002	Pyroxylin Plastic, Code for the Storage of	312 ¹	2000	Vessels During Construction, Repair and Lay-up, Standard for Fire Protection of
150 ¹	2000	Race Track Stables, Standard on Fire Safety	25 ¹	2002	Water-Based Fire Protection Systems, Standard for the Inspection, Testing, and Maintenance of
232 ¹	2000	Records, Standard for the Protection of	214 ¹	2000	Water-Cooling Towers, Standard on
501D⁺	1996	Recreational Vehicle Parks and Campgrounds, Standard for	750 ¹	2000	Water Mist Fire Protection Systems, Standard on
501C⁺	1996	Recreational Vehicles, Standard on	15 ¹	2001	Water Spray Fixed Systems for Fire Protection, Standard for
88B	1997	Repair Garages, Standard for	1234	1993	Water Supplies for Suburban and Rural Fire Fighting, Standard of
502 ¹	2001	Road Tunnels, Bridges, and Other Limited Access Highways, Recommended Practice on Fire Protection for	1142	2001	Water Supplies for Suburban and Rural Fire Fighting, Standard of
231F⁺	1996	Roll Paper, Standard for the Storage of	22	1998	Water Tanks for Private Fire Protection, Standard for
231D	1994	Rubber Tires, Standard for Storage of	51 ¹	2002	Welding, Cutting, and Allied Processes, Standard for Design and Installation of Oxygen-Fuel Gas Systems for
101 ³	2000	Safety to Life from Fire in Buildings and Structures	51B ¹	1999	Welding, Cutting and Other Hot Work, Standard for Fire Prevention During
92A ¹	2000	Smoke-Control Systems, Recommended Practice for	17A ¹	2002	Wet Chemical Extinguishing Systems, Standard for
92B ¹	2000	Smoke Management Systems in Malls, Atria and Large Areas, Guide for	18	1995	Wetting Agents, Standard on
36 ¹	2001	Solvent Extraction Plants, Standard for	664 ¹	2002	Wood Processing and Woodworking
33 ¹	2000	Spray Application Using Flammable and Combustible Materials, Standard for			
13 ^{1,3}	2002	Sprinkler Systems, Standard for the Installation of			

482 1996 Facilities, Standard Prevention of Fires and Explosions in ~~Zirconium, Standard for the Production, Processing, Handling, and Storage of~~

(1) Indicates an Updated Document; (2) Indicates a Document New to the SFPR; and (3) Indicates a Document Amended in Annex B

Part I Annex B

MODIFY NFPA 13, 1999 2002, Standard for the Installation of Sprinkler Systems.

Chapter 6, System Components.
6.8 Fire Department Connection.

Amend 6.8.1 to read as follows:

6.8.1 The fire department connection(s) shall use hose connections compatible with the local fire company.

~~Chapter 5 8,~~ Installation Requirements.

- ~~5-15 8.16~~ System Attachments.
- ~~5-15.2.3 8.16.2~~ Arrangement.
- ~~5-15.2.3 8.16.2.4.6~~ Fire Department Connection.

Amend ~~§5-15.2.3.5 8.16.2.4.6~~ by deleting the existing ~~§5-15.2.3.5 8.16.2.4.6~~ and inserting a new section to read as follows:

~~5-15.2.3.5 8.16.2.4.6~~ Fire Department Connections shall be located or arranged as required by the Chief Officer of the fire department having jurisdiction according to the following:

(a) The Office of State Fire Marshal will give notice to the Chief Officer of a building that is proposed for construction that is to be protected with an automatic sprinkler system, and the Chief Officer must respond, in writing, within 5 working days, as to their requirement for the location of the fire department connection.

(b) In the event that the Chief Officer does not respond according to (a) of this Section, the Office of State Fire Marshal will determine the location for the fire department connection. This provision will permit the Office of State Fire Marshal to locate the fire department connection so that hose can be readily and conveniently attached; and the fire department connections will be located in a manner consistent with nationally recognized practices.

(c) Each fire department connection to sprinkler systems shall be designated by a sign having raised letters at least 1 in. (25.4 mm) in height cast on plate or fitting, reading service design, e.g., "AUTOSPRK", "OPEN SPRK AND STANDPIPE." A sign shall also indicate the pressure required at the inlets to deliver the greatest system demand.

Exception to (c): The sign is not required where the system demand pressure is less than 150 psi (10.3 bars).

Chapter ~~8~~ 14, Plans and Calculations.
~~8-4 14.4~~ Hydraulic Calculation Procedures.
~~8-4.4 14.4.4~~ Calculation Procedures.

AMEND ~~§8-4.4 14.4.4,~~ Calculation Procedures, by adding a new subsection to read as follows:

~~8-4.4.9 14.4.4.10~~ A hydraulically designed sprinkler system shall be designed to provide a 10 PSI safety factor over and above the system demand.

MODIFY NFPA 13D, 1996 2002, Standard for the Installation of Sprinkler Systems In One- And Two-Family Dwellings And Manufactured Homes.

~~Chapter 3 7,~~ System Components.
~~3-6 7.6~~ Alarms.

AMEND ~~§3-6 7.6~~ Alarms, by deleting the existing Exception and adding the following to

~~§3-6 7.6:~~ The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level inside the protected property.

MODIFY NFPA 13R, 1999 2002, Standard for the Installation of Sprinkler Systems In Residential Occupancies Up To And Including Four Stories.

AMEND §1.1 Scope, by inserting additional text and have section to read as follows

1.1 Scope

This standard covers design and installation of automatic sprinkler systems for protection against fire hazards in residential occupancies up to and including four stories in height and not exceeding 10,000 square feet in aggregate gross floor area.

~~2-4.6 6.6.8~~ Alarms.

AMEND ~~§2-4.6 6.6.8.1~~ Alarms, by deleting existing ~~§2-4.6 6.6.8.1~~ and inserting a new section to read as follows:

~~2-4.6 6.6.8.1~~ All residential (13R) sprinkler systems shall have a water flow alarm installed that will provide an audible sound. The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level both inside and outside the residence.

MODIFY NFPA 14, 2000, Standard for the Installation of Standpipe and Hose Systems.

Chapter 5, Design.

5-3 Location of Hose Connections.

5-3.2 Class I Systems

AMEND §5-3.2 (a) by deleting the Exception:

~~Exception: Hose connections shall be permitted to be located at the main floor landings in exit stairways where approved by the authority having jurisdiction.~~

~~**MODIFY NFPA 30A**, 1996, Automotive And Marine Service Station Code.~~

~~Chapter 2, Storage.~~

~~2-1 General Provisions.~~

~~AMEND §2-1, General Provisions, by adding new subsections to read as follows:~~

~~— 2-1.8 All underground petroleum storage tank fill pipes shall be marked and maintained with colors and symbols consistent with API Recommended Practice 1637.~~

~~— 2-1.9 The seasonal exchange of product shall be prohibited in underground storage tanks.~~

~~— 2-1.10 No change of class of product within storage tanks shall be made without prior approval of the State Fire Marshal.~~

~~Chapter 4, Fuel Dispensing System.~~

~~4-2 Fuel Dispensing System.~~

~~AMEND §4-2, Fuel Dispensing System, by adding new subsections to read as follows:~~

~~4-2.10 Dispensing units for kerosene shall not be located on the same island with Class I liquid dispensing units.~~

~~4-2.11 Islands with dispensing units for kerosene shall be located a minimum of 10' from islands with Class I liquid dispensing units.~~

~~4-2.12 Dispensing units for kerosene shall be provided with a legible sign, bearing the word "KEROSENE" in a minimum 4" high letter, with such letters to be in blue with a contrasting background color.~~

~~Chapter 9, Operational Requirements.~~

~~9-2 Dispensing Into Portable Containers.~~

~~RENUMBER Subsection 9-2.2, to 9-2.3 and insert a new Subsection 9-2.2 to read as follows:~~

~~9-2.2 No sale or purchase of kerosene shall be made in containers unless such containers meet the provisions of this standard and are a color other than red with the word "KEROSENE" marked thereon. (The recommended color is blue with white lettering.)~~

~~AMEND Chapter 9, Operational Requirements, by adding new §9-10 to read as follows:~~

~~9-10 Marine Dispensing Areas.~~

~~9-10.1 The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft must be accomplished at a designated marine Service Station, and that service~~

~~station must be in accordance with the applicable provisions of these Regulations.~~

~~9-10.2* The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft shall be prohibited from a tank truck vehicle.~~

~~A-9-10.2 It is the express intent of this section to prohibit the transfer of Class I liquids from a tank truck vehicle directly into the fuel tanks of a boat or any other self-propelled water craft.~~

~~9-10.3* The dispensing of Class II Liquids into the fuel tanks of self-propelled water craft, is permitted provided the tank truck vehicle is equipped with an automatic shut off nozzle.~~

~~A-9-10.3 This change is based on an appeal filed by the Delaware Captains Association. This appeal was heard by the State Fire Prevention Commission on September 20, 1994 and was subsequently approved by the State Fire Prevention Commission on September 20, 1994.~~

~~**MODIFY NFPA 30A**, 2000, Automotive And Marine Service Station Code.~~

~~Chapter 5, Piping for Liquids.~~

~~5.2 General Requirements for All Piping~~

~~AMEND §5.2, General Requirements for All Piping to read as follows:~~

~~5.2.5 Each fill pipe shall be identified by color code or other marking to identify the product for which it is used. The color code or marking shall be maintained in legible condition throughout the life of the installation. All underground petroleum storage tank fill pipes shall be marked and maintained with colors and symbols consistent with API Recommended Practice 1637.~~

~~Chapter 9, Operating Requirements.~~

~~9.2 Basic Requirements~~

~~9.2.1 Inventory Control~~

~~AMEND §9.2.1, Inventory Control by adding new subsections to read as follows:~~

~~9.2.1.1 The seasonal exchange of product shall be prohibited in underground storage tanks.~~

~~9.2.1.2 No change of class of product within storage tanks shall be made without prior approval of the State Fire Marshal.~~

~~Chapter 6, Fuel Dispensing System.~~

~~6-2 General Requirements.~~

~~AMEND §6-2, General Requirements, by adding new subsections to read as follows:~~

~~6.2.3 Dispensing units for kerosene shall not be located within 25' of Class I liquid dispensing units.~~

6.2.4 Islands with dispensing units for kerosene shall be located a minimum of 10' from islands with Class I liquid dispensing units.

6.2.5 Dispensing units for kerosene shall be provided with a legible sign, bearing the word "KEROSENE" in a minimum 4" high letter, with such letters to be in blue with a contrasting background color.

Chapter 9, Operational Requirements.

9.2 Dispensing Into Portable Containers.

RENUMBER Subsection 9.2.3.3 to 9.2.3.4 and insert a new Subsection 9.2.3.3 to read as follows:

9.2.3.3 No sale or purchase of kerosene shall be made in containers unless such containers meet the provisions of this standard and are a color other than red with the word "KEROSENE" marked thereon. (The recommended color is blue with white lettering.)

AMEND Chapter 11, Marine Fueling, by renumbering §11.10.6 to §11.10.6.1 and adding new §11.10.6.2, §11.10.6.3 and §11.10.6.4 to read as follows:

11.10 Operating Requirements.

11.10.6.2 The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft must be accomplished at a designated marine Service Station, and that service station must be in accordance with the applicable provisions of these Regulations.

11.10.6.3* The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft shall be prohibited from a tank truck vehicle.

A-11.10.6.3 It is the express intent of this section to prohibit the transfer of Class I liquids from a tank truck vehicle directly into the fuel tanks of a boat or any other self-propelled water craft.

11.10.6.4* The dispensing of Class II Liquids into the fuel tanks of self-propelled water craft, is permitted provided the tank truck vehicle is equipped with an automatic shut off nozzle.

A-11.10.6.4 This change is based on an appeal filed by the Delaware Captains Association. This appeal was heard by the State Fire Prevention Commission on September 20, 1994 and was subsequently approved by the State Fire Prevention Commission on September 20, 1994.

MODIFY NFPA 54, 1996 2002, National Fuel Gas Code.

Chapter 9, Installation Of Specific Equipment.

6-24 9.23 Room Heaters.

AMEND §~~6-24-1~~ 9.23.1, Prohibited Installations, by deleting the two exceptions, thereby specifically prohibiting the installation of unvented fuel fired room heaters in bathrooms or bedrooms, to read as follows:

~~6-24-1~~ 9.23.1 Prohibited Installations. Unvented room heaters shall not be installed in bathrooms and bedrooms.

MODIFY NFPA 58, 1995 2001, Standard for the Storage and Handling of Liquefied Petroleum Gases.

Chapter 1, General Provisions.

1-4 Notification Of Installations.

Amend §1-4.1, ~~Fixed~~ Stationary Installations, by deleting the existing section and inserting two new subsections to read as follows:

~~1-4.1*~~ 1-4.1.1* Plans shall be submitted to the Office of State Fire Marshal for review and approval for the following liquefied petroleum gas (LPG) installations:

(a) At consumer sites having an aggregate water capacity of 1,000 gallons or more tank storage; and

(b) For all portable cylinder exchange at consumer sites or dispensing stations, where not connected for use, and in storage for resale or exchange by dealer or reseller.

~~A-1-4.1~~ A-1-4.1.1 This section still requires the submission of plans for all LP Gas installations with an aggregate capacity of 1,000 gallons or more, and now requires the submission of plans for all portable cylinder exchange installations.

~~1-4.2*~~ 1-4.1.2* Plans shall be submitted to the Office of State Fire Marshal for review and approval regarding liquefied petroleum gas (LPG) installations for all sites and locations where LPG is dispensed by a retail operation to the public, regardless of tank storage capacity.

A-1-4.1.2 Submission of plans for all LP Gas Installations where tanks are filled as a retail operation for the public.

Exception To ~~1-4.1 and 1-4.2~~ 1-4.1.1 and 1-4.1.2: One- and Two-Family Dwellings are not required to comply with these sections.

MODIFY NFPA 70, 2002, The National Electrical Code.

Article 210, Branch Circuits

210.12 Arc-Fault Circuit-Interrupter Protection.

AMEND §210.12(B), by adding a second third and fourth sentences to read:

(B) Dwelling Unit Bedrooms. All branch circuits that supply 125-volt, single-phase, 15- and 20-ampere outlets installed in dwelling unit bedrooms shall be protected by an arc-fault circuit interrupter listed to provide protection of the entire branch circuit. Smoke alarms shall not be placed on branch circuits protected by arc-fault circuit interrupter. All smoke alarms shall be supplied by branch circuits dedicated to smoke alarm equipment. The connection of the smoke alarm branch circuit to the power service shall be

mechanically protected by utilizing lock-on devices.

MODIFY NFPA 70, 2002, The National Electrical Code.

Article 550, Mobile Homes/Manufactured Homes

550.25 Arc-Fault Circuit-Interrupter Protection.

AMEND §550.25(B), by adding a second third and fourth sentences to read:

(B) Dwelling Unit Bedrooms. All branch circuits that supply 125-volt, single-phase, 15- and 20-ampere outlets installed in dwelling unit bedrooms shall be protected by an arc-fault circuit interrupter listed to provide protection of the entire branch circuit. Smoke alarms shall not be placed on branch circuits protected by arc-fault circuit interrupter. All smoke alarms shall be supplied by branch circuits dedicated to smoke alarm equipment. The connection of the smoke alarm branch circuit to the power service shall be mechanically protected.

MODIFY NFPA 99, 2000 2002, Health Care Facilities

Chapter 3, Electrical Systems.

3-4 Essential System.

3-4.2.2 Emergency System.

AMEND §3-4.2.2.2(b), Life Safety Branch, by adding a new subsection to read as follows:

3-4.2.2.2(b)(8) Electric Fire Pumps

Chapter 4, Electrical Systems.

4.4 Essential System.

4.4.2 Distribution (Type 1 EES)

4.4.2.2 Specific Requirements.

AMEND §4.4.2.2.2, Life Safety Branch, by adding a new subsection to read as follows:

4.4.2.2.2(9) Electric Fire Pumps

MODIFY NFPA 101, 2000, The Life Safety Code.

Chapter 16, New Day Care Occupancies.

16-2 Means of Egress Requirements.

16-2.2 Means of Egress Components.

16-2.2.2 Doors.

AMEND §16-2.2.2.2, Panic Hardware or Fire Exit Hardware, by deleting the existing §16-2.2.2.2, and inserting a new §16-2.2.2.2 to read as follows:

16-2.2.2.2 Panic Hardware Or Fire Exit Hardware.

Any door in a required means of egress may be provided with a latch or lock only if it is panic hardware or fire exit hardware. Any door in a required means of egress from an area having an occupant load of 13 or more [persons clients] shall be permitted to be provided with a latch or lock only if

the latch or lock is panic hardware or fire exit hardware.

Chapter 18, Health Care Occupancies

18.3.2 Protection from Hazards.

AMEND §18.3.2, by adding §18-3.2.8, to read as follows:

18.3.2.8 Dispensers containing Alcohol Based Waterless Hand Sanitizing Liquid shall be prohibited from being located in corridors or any area open to a required exit or corridor. Dispensers containing Alcohol Based Waterless Hand Sanitizing Liquid shall be isolated from possible ignition sources, such as, but [not] limited to, open-flame, electrical equipment, switches or receptacle outlets.

Chapter 26, Lodging Or Rooming Houses.

26-3 Protection.

26-3.3 Detection, Alarm, And Communication Systems.

AMEND §26-3.3, Detection Alarm, And Communication Systems, by adding a new Subsection to read as follows:

26-3.3.4 A corridor smoke detection system in accordance with §7-6 §9.6 shall be installed in all lodging or rooming houses.

Chapter 30, New Apartment Buildings.

30-3.4 Detection, Alarm, and Communication Systems.

AMEND §30-3.4.1, General, by deleting §30-3.4.1 and two exceptions, and inserting a new §30-3.4.1 and exception to read as follows:

30-3.4.1 General. All new apartment buildings shall be provided with a fire alarm system in accordance with §7-6 §9-6, except as modified by 30-3.4.2 through 30-3.4.4.

Exception: Where each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than one hour, and where each dwelling unit has either its own independent exit or its own independent stairway or ramp discharging at grade.

AMEND §30-3.4.4, Detection, by adding a new Subsection to read as follows:

30-3.4.4.1 A corridor smoke detection system in accordance with §7-6 §9.6, shall be installed in all apartment buildings.

30.3.5 Extinguishment Requirements.

AMEND §30.3.5.1, by revising §30.3.5.1 Exception No. 1, to read as follows:

Exception No. 1: In buildings not exceeding 10,000 sq. ft. of aggregate gross floor area and sprinklered in accordance

with NFPA 13, Standard for the Installation of Sprinkler Systems, closets less than 12 ft²-(1.1 m²) in area in individual dwelling units shall not be required to be sprinklered. Closets that contain equipment such as washers, dryers, furnaces, or water heaters shall be sprinklered regardless of size.

Chapter 32, New Residential Board And Care Occupancies.
32-2 Small Facilities.

AMEND §32-2, Small Facilities, by adding new Subsections to read as follows:

32-2.2.7 Emergency Lighting. Emergency lighting shall be installed in accordance with ~~§5-9~~ §7.9.

32-2.2.8 Marking Of Means Of Egress. Means of egress shall be marked in accordance with ~~§5-10~~ §7.10.

32-2.2.9 Portable Fire Extinguishers. Portable fire extinguishers shall be provided near hazardous areas in accordance with ~~§7-7~~ §9.7.

32-2.3.4 Detection, Alarm, and Communication Systems.

AMEND §32-2.3.4, Detection, Alarm, and Communication Systems, by adding §32-2.3.4.4, Emergency Forces Notification, to read as follows:

32-2.3.4.4 Emergency Forces Notification. Fire department notification shall be accomplished in accordance with ~~§7-6.4~~ §9.6.4.

32-3 Large Facilities.

32-3.3.4 Detection, Alarm, and Communication Systems.

AMEND §32-3.3.4.6, Fire Department Notification, by deleting the existing §32-3.3.4.6 and inserting a new §32-3.3.4.6 to read as follows:

32-3.3.4.6 Fire Department Notification. Fire department notification shall be accomplished in accordance with ~~§7-6.4~~ §9.6.4.

Part I Chapter 2 - Definitions

2-1 Definitions

Height. For purposes of determining building height, measurements shall be ~~taken at the building's lowest grade level and extend to the highest point of a flat roof or to the mean level of the highest gable or slope of a hip or mansard roof~~ measured from the lowest level of fire department vehicle access to the floor of the highest occupiable story.

Part II; Chapter 6 - Standard For Fire Flow For Fire Protection

6-2.1 Notwithstanding, any other provisions of the Delaware State Fire Prevention Regulations, for all buildings or structures of less than 10,000 square feet of aggregate gross floor area, and where there is not a public water system or a central water system; the State Fire Marshal may utilize the provisions of the *Standard on Water Supplies for Suburban and Rural Fire Fighting*, NFPA ~~1231~~ 1142, as adopted and/or modified by these Regulations, as meeting the requirement for fire flow. (See §6-7, Dry Hydrants, at the end of this Chapter).

6-4.2 The requirements of Fire Flow Table 1, with respect to the provisions of the *Standard on Water Supplies for Suburban and Rural Fire Fighting*, NFPA ~~1231~~ 1142, as adopted and/or modified by these Regulations, may be applied to subdivisions of 25 or less lots of detached one- and two-family dwellings, where central water is provided, but the requirement for water flow for fire protection is as follows:

1) The infrastructure for fire flow capability must be installed to ~~accomodate~~ accommodate the fire flow requirements when additional development occurs.

Chapter 6 – Fire Flow Table 1

Fire Flow Table 1*

The requirements of apply to rural areas where public, private, or central water is not available.

Occupancy	Maximum Aggregate Gross Square Footage	Provide a fire alarm system per 6-3.1.4	Minimum Set Back from all property lines	Maximum Height	Exposure Hazard on the Same Property	Internal Fire Separation	Apply
One & Two – Family Detached Dwellings	10,000	no	15'	3 Stories 35'	10'+	n/a	NFPA- 1231 NFPA 1142
Multi-Family & Other Residential	10,000	no	15'	3 Stories 35'	10'+	n/a	NFPA- 1231 NFPA 1142
Rowhouses & Townhouses	10,000	no	15'	3 Stories 35'	10'+	2-Hr rated wall Part I Chapter 2	NFPA- 1231 NFPA 1142
Assembly	5,000	no	15'	1 Story 15'	10'+	n/a	NFPA- 1231 NFPA 1142

Assembly ¹	5,001 to 10,000	<u>YES</u>	15'	2 Stories 30'	10'+	n/a	NFPA-1231 NFPA 1142
Health Care Business Education	10,000	<u>no</u> <u>no</u> <u>no</u>	15'	2 Stories 30'	10'+	n/a	NFPA-1231 NFPA 1142
Storage Industrial Mercantile	5,000	<u>no</u> <u>no</u> <u>no</u>	15'	To be reviewed on an individual basis	15'+	n/a	NFPA-1231 NFPA 1142
Storage ¹ Industrial ¹ Mercantile ¹	5,001 to 10,000	<u>YES</u> <u>YES</u> <u>YES</u>	25'	To be reviewed on an individual basis	15'+	n/a	NFPA-1231 NFPA 1142
Mini-Storage	5,000	<u>no</u>	15'	2 Stories 30'	15'+	n/a	NFPA-1231 NFPA 1142
Mini-Storage	5,001 to 10,000	<u>no</u>	25'	2 Stories 30'	15'+	n/a	NFPA-1231 NFPA 1142

¹ A fire alarm signaling system shall be provided. See §6-3.1.4.

***A-Fire Flow Table 1.**

The requirements of Fire Flow Table 1 apply to rural areas where public, private or central water is not available. Where Exposure Hazard, Same Property (EHSP) or Minimum Set Back from all property lines (MSB) cannot be met, the following table may be utilized.

Occupancy	Maximum Aggregate Gross Square Footage	Fire Separation Distance (or Exposure Hazard, Same Property)	Exterior Wall Fire Resistance Rating
One- and Two-Family Detached Dwellings	10,000	Less than 10 feet	1-Hour
Multi-Family & Other Residential	10,000	Less than 10 feet	2-Hour
Rowhouses & Townhouses	10,000	Less than 10 feet	2-Hour
Assembly	10,000	Less than 5 feet	2-Hour
		5 to 10 feet	1-Hour
Health Care Business Education	10,000	Less than 5 feet	2-Hour
		5 to 10 feet	1-Hour
Storage Industrial Mercantile	10,000	Less than 5 feet	2-Hour
		5 to 15 feet	1-Hour

Mini Storage	10,000	Less than 5 feet	2-Hour
		5 to 15 feet	1-Hour

Fire Flow Table 2

The requirements of Fire Flow Table 2 apply to areas where there is a public, private, or central water system.

Occupancy	Maximum Aggregate Gross Square Footage	Internal Fire Separation	Flow Required	Hydrant Spacing
One- and Two-Family Detached Dwellings *	10,000	n/a	500 GPM 20 PSI Residual Pressure 1 Hour Duration	1,000 feet on center
Other Residential*	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Rowhouses* & Townhouses*	10,000	2-Hr rated wall	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
		Part I Chapter 2		
Assembly Health Care Business Education	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Storage Industrial Mercantile	10,000	n/a	1,500 GPM 20 PSI Residual Pressure 2 Hour Duration	800 feet on center
Mini-Storage	10,000	n/a	750 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center

*Sites in New Castle County are subject to the provisions of Ordinance #90-200. See §A-6-1.4.1 and §A-6-1.4.2.

***Fire Flow Table 3**

It is the intent of Fire Flow Table 3 to allow a credit for water flow that is available on site, but does not meet the full water flow requirements of Fire Flow Table 2. However, the available water flow on site shall be a minimum of 500 GPM, otherwise the requirements of Fire Flow Table 1 shall be applied to the site. This Table does not apply to new public, private, nor central water systems, including municipalities.

Part III; Chapter 1

Operation, Maintenance And Testing Of Fire Protection Systems

Occupancy	Maximum Aggregate Gross Square Footage	Minimum Set Back from all property lines	Exposure Hazard on the Same Property	Internal Fire Separation
One- and Two-Family Dwellings, Multi-family, and Other residential	10,000	*15'	*10'+	n/a
Rowhouses Townhouses	10,000	*15'	10'+	Two Hour Rated Design Wall Part I, Chapter 2
Assembly	10,000	*15'	*10'+	n/a
Health Care Business Education	10,000	*15'	*10'+	n/a
Storage Industrial Mercantile	10,000	*25'	*15'+	n/a
Mini Storage	5,000	*15'	*15'+	n/a
Mini Storage	5,001 to 10,000	*25'	*15'+	n/a

* See Appendix for additional information and an example.

A-Fire Flow Table 3 For example, if 1,000 GPM is required for a 9,000 sq. ft. Business Occupancy, but only 500 GPM is available, or 50%, then the required setbacks shall be reduced by 50% so that the Minimum Setback (MSB) from property lines would be 7.5 feet, instead of 15 feet, and the Exposure Hazard on the Same Property (EHSP) would be five feet, instead of ten feet.

Part II; Chapter 7 - Minimum Requirements For Water Suppliers

7-3.1 All water suppliers covered under the provisions of this Regulation shall provide a water supply capable of the minimum flow of 500 GPM at a residual pressure of at least 20 PSI for at least two (2) hours. Where the water supply serves only one and two family dwellings, it shall be capable of the minimum flow of 500 GPM at a residual pressure of at least 20 PSI for at least one (1) hour.

7-5.1 Fire hydrants and water mains shall be installed in accordance with American Water Works Standards; the *Standard for the Installation of Private Fire Service Mains and Their Appurtenances*, NFPA 24, as adopted and/or modified by these Regulations; and in conformance with accepted engineering principles and practices.

1-2.1 Automatic Fixed Fire Suppression System. An engineered system using carbon dioxide (CO₂), dry chemical, wet chemical, foam, clean agent, a halogenated extinguishing agent, or ~~an automatic sprinkler water spray~~ system to automatically detect and suppress a fire through fixed piping and nozzles.

Clean Agent. Electrically nonconducting, volatile or gaseous fire extinguishant that does not leave a residue upon evaporation.

~~1-3.4.1*~~ 1-3.4.1 The installation of fire protection systems, ~~specifically those~~ systems not required to be installed under the provisions of these Regulations, shall be designed, installed, serviced, tested, or maintained according to the specifications and standards as provided for such Fire Protection Systems as found in these Regulations.

~~(a) Not to be used to denote single, stand alone devices such as, battery powered residential smoke detectors.~~

Exception: This does not apply to single station or multi-station battery powered residential smoke detectors.

~~A-1-3.4.1 It is the intent of this Section to provide for the design and installation of all Fire Protection Systems, even if not required in occupancies, operations, etc., by these Regulations, to be designed, installed, etc., to the standards and/or specifications for such systems as found in these Regulations. Systems in this context is meant to be a configuration of several components that comprise a protection, detection, alarm, or suppression package designed and installed as a fire protection system in a building or structure. Not to be used to denote single, stand alone devices such as, battery powered residential smoke detectors.~~

1-4.1.2 Before testing any suppression system, standpipe, or fire alarm system which is connected to a central station or connected directly to a fire dispatch center, or the fire or police department, notification shall be given to the central station, fire dispatch center, fire department or police department before initiation of the tests.

1-4.1.4 Annual Inspection, Testing, And Maintenance Service. Annual inspection, testing, and maintenance is required for all fire alarm signaling, fire suppression, and any other fire protection systems, devices, and equipment installed within the State of Delaware. This annual inspection, testing, and maintenance service shall be completed by a company licensed in accordance with Part III, Chapters 2, 4, 5, 6, and/or 7 of this Regulation. Upon completion of this annual inspection, testing, and maintenance service, the licensed company shall submit an

Annual Certificate of Inspection shall be submitted, along with the appropriate fees as listed in Appendix E of these Regulations, in accordance with §1-4.1.5 of this Chapter.

~~1-4.1.6 Submission Of Fees For Certification For Fire Protection Systems. At the completion of the Annual Testing, Inspection, or Maintenance for each fire protection system, the licensed Fire Protection Systems Company:~~

~~(1) May submit the appropriate fees as listed in Appendix E of these Regulations to the Office of State Fire Marshal; OR~~

~~(2) May provide the system owner with a fee card and letter of explanation, and it will be the responsibility of the system owner to forward the appropriate fee(s) to the Office of State Fire Marshal.~~

~~(a) All fees required to be submitted under §1-4.1.6 shall be submitted to the Office of State Fire Marshal within 30 calendar days of the date of testing, inspection, or maintenance.~~

~~(b) The Licensed Company shall, within 30 calendar days of performing the annual testing, inspection, or maintenance, submit to the Office of State Fire Marshal:~~

~~(1) A completed Certificate of Inspection(s) with the appropriate fee(s); OR~~

~~(2) A completed Certificate of Inspection(s) and a list of where a (all) fee card(s) and letter(s) were left with the owner(s) of the system(s), wherein the owner(s) is (are) to submit the required fee(s).~~

~~(c) Such fee cards, letters, and reporting forms are to be of a design and specification by the Office of State Fire Marshal.~~

~~(d) If the owner(s) of the fire protection system(s) does not submit the required fee(s) within the 30 day period as stated in these Regulations, the owner(s) shall be in violation of the Delaware State Fire Prevention Regulations and the fire protection system(s) shall be classified as not being in compliance.~~

1-4.1.6 The failure of the licensed company to comply with the provisions of this Section, shall constitute a violation of the Delaware State Fire Prevention Regulations.

~~1-6.3 Servicing Actuated Discharged Units. Actuated Discharged and partially discharged extinguishers shall be immediately moved away from their designated location and shall be temporarily replaced with a standby or spare unit of the same equal type and capacity as the actuated discharged-unit.~~

~~1-6.4 Discontinued Fire Appliances. Soda acid, foam, loaded stream, antifreeze, and water portable fire extinguishers of the inverting type shall not be recharged or placed in service for fire protection use. Extinguishers of these types shall not be considered are not approved devices for fire protection use under the provisions of this Regulation.~~

~~1-7.1.3 Certificate of Installation Record of~~

~~Completion A Certificate of Installation Record of Completion shall be forwarded to the State Fire Marshal by the licensed company that installed the fire alarm signaling system within five (5) days of having placed the system in service. Certificate of Installation A Record of Completion shall be submitted in such form as the State Fire Marshal may prescribe. The installing company or person shall certify in writing that the installation has been made in accordance with the approved plans and that all component parts of the system are in service. Approval by the State Fire Marshal shall be withheld until said Certificate of Installation Record of Completion is received and accepted by the State Fire Marshal.~~

~~1-8.1 Prior to any Testing, Maintenance, Inspection or any work on the fire protection systems as found in this Chapter, the company performing such services must notify the 911 fire dispatch center providing service for the location, where the fire protection systems are located, of the following:~~

~~(a) Prior to initiating or starting such work as referenced in Section 1-8.1 notify the 911 fire dispatch center that such work is being performed, identifying the name of the facility, the address of the facility, the name of the company, and the License Number of the company providing the services.~~

~~(b) That any alarms received from the facility shall be verified by the 911 Center fire dispatch center prior to any emergency services dispatch being made.~~

~~(c) That at the conclusion or finish of the work being performed on the systems, the 911 fire dispatch center will be notified that the company has completed the work and that the alarm system is back in-service and any alarms from the facility shall represent an "alarm" condition, requiring the appropriate emergency services dispatch.~~

~~1-8.2 It is the responsibility of the company performing the Testing, Inspection, Maintenance or any work on the fire protection systems to identify the correct 911 Center fire dispatch center or the correct emergency services dispatch center which serves the area in which the facility to have work performed is located. It shall be the responsibility of the licensed company to ensure their employee make appropriate notifications to include but not limited to fire dispatch center and fire alarm signaling monitoring company.~~

~~1-8.3 The failure of the licensed company performing the services as referenced in this Chapter to comply with the provisions of this Section, shall constitute a violation of the Delaware State Fire Prevention Regulations; and action will be taken pursuant to the provisions of the Delaware Code Title 16, Chapter 66 for such violations.~~

Part III; Chapter 2**Sale And Servicing Of Portable Fire Extinguishers**

2-2.3.1 All portable fire extinguishers shall be serviced or maintained on an annual (every 12 months) basis.

Exception: Nonrechargeable dry chemical fire extinguishers with a net weight of 2½ pounds or less where used in dwelling units in apartment buildings.

Part III; Chapter 3**Standard For Fire Hydrant Maintenance, Inspection, Testing, And Marking**

3-1.2.2 This Regulation is also an attempt ~~to improve~~ to ensure a working relationships between the water suppliers and fire departments throughout the State.

3-2.4.3 If a hydrant is to be out of service for more than 30 calendar days, it shall be the responsibility of the water supplier to notify the Office of the State Fire Marshal with a corrective plan of action and have the hydrant securely covered with a burlap or black heavy duty plastic bag until the hydrant is placed back into service.

3-3.5 All fire hydrant flow testing.... shall include the following:

(h) ~~Hydrant hydraulic coefficient.~~ Size (diameter) of the flow orifice and its coefficient of discharge

Part III; Chapter 4**Licensing Regulations For Fire Alarm Signaling Systems**

~~4-2 Fire Alarm Signaling Systems Company, Existing. Shall mean a person, organization, or entity that meets the definition of FIRE ALARM SIGNALING SYSTEMS COMPANY (VENDOR) who can clearly demonstrate performing work of this nature prior to the effective date of this Regulation.~~

Preparing Technical Documents. Shall mean the preparation of detailed fire alarm signaling system drawings, calculations, and specifications for installation in accordance with the applicable codes, statutes and regulations adopted by the ~~State of Delaware~~ State Fire Prevention Commission. It is further defined to mean that the technical documents, specifications, and design drawings referred to in this Section are the documents which shall be submitted to the Office of State Fire Marshal for review and approval.

Responsible Charge. Shall mean the individual, who is responsible to ensure that all of the requirements of the ~~State of Delaware~~ State Fire Prevention Regulations are complied with in the application of those standards and specifications to fire alarm signaling systems. The person, or persons, of responsible charge shall be accountable for each phase of the following activities with respect to fire alarm signaling systems, when such activities constitute an element of their

particular Class of Certificate:

4-3.4.3 Insurance Certificates filed with the Office of State Fire Marshal under this Section shall remain current and in force until the insurer has terminated future liability by a ~~30~~ 10 day notice to the Office of State Fire Marshal.

4-4.1.2 The Certificate holder is the individual in RESPONSIBLE CHARGE of ensuring that the functions for which they have been certified have been performed in accordance with the standards and specifications of the ~~State of Delaware~~ State Fire Prevention Regulations.

4-4.2.3 Class III: Limited to fire alarm signaling and related systems in the following categories:

III Central Station Facilities and Systems (~~typical of~~ NFPA 71 facilities and systems).

4-4.3.1 To qualify as a Certificate Holder an individual shall:

(d) Have passed an examination prescribed by the Delaware State Fire Prevention Commission or an equivalent examination approved by the Delaware State Fire Prevention Commission. Any examination that has been passed as prescribed by the Delaware State Fire Prevention Commission, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.

(e) To be utilized in the Certification process, any examination that has been passed as prescribed by the State Fire Prevention Commission in (d) above, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.

~~(f)~~ (e) For the purposes of this Regulation, a Registered Delaware Professional Engineer shall be recognized as a Certificate Holder without further qualification.

~~4-5 Existing Fire Alarm Signaling Systems Companies.~~

~~4-5.1 Existing companies shall have until December 31, 1991 to comply with the certification requirements herein.~~

~~4-5.2 Any company may apply for a single extension of six months which may be granted at the discretion of the Delaware State Fire Prevention Commission for the purpose of complying with the licensing requirements of this Regulation.~~

~~4-5.3 The individual or individuals who submit an application for certification must be able to demonstrate at least three years experience in the preparation of technical documents, installation, inspection, testing or maintenance of fire alarm signaling systems, in order to have a provisional license issued under this Section.~~

~~4-5.4 Notwithstanding the provisions of §4-5.2, those companies that have applied for and have been granted~~

an extension as provided for in §4-5.2 by the Delaware State Fire Prevention Commission, shall have until June 30, 1993 for the purpose of complying with the licensing requirements of this Regulation.

~~4-5.5* Notwithstanding the provisions of §4-5.2 and §4-5.4, those individuals, who have attended any training seminars or who have sat for any testing process associated with the licensing requirements of these Regulations, shall have until June 30, 1993, to comply with the certification requirements of this Regulation.~~

~~A-4-5.5 It is the express intent of the Delaware State Fire Prevention Commission that any individual who has attended a training seminar or who has sat for any of the testing requirements associated with the licensing requirements of these Regulations, shall have until June 30, 1993 to comply with the certification requirements of these Regulations, pursuant to the action of the Commission of February 18, 1992.~~

4-5 (Reserved)

4-6.6:

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission ~~of the State of Delaware;~~

4-6.7 Any person aggrieved by an order or decision of the State Fire Marshal with respect to the provisions of this Chapter may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del. C. §6608 and in accordance with the provisions of these Regulations.

4-8.1 The licensed company's ~~Certificate Holder~~ is responsible to forward to the Office of State Fire Marshal, on the prescribed form, a separate Annual Certificate of Inspection, along with the appropriate fees for all such fire alarm signaling systems that the licensed company may inspect, test, or maintain. This Certificate of Inspection, which must be submitted annually, shall verify that the ~~State~~ State of Delaware State Fire Prevention Regulations standards and specifications regarding the inspection, testing, or maintenance have been met and any deficiencies noted at the time of the annual inspection, testing, or maintenance shall be noted, with corrective action, if any, taken.

Exception: Certificates of Inspection are not required to be submitted for One-and-Two Family Dwellings.

⇒ ~~4-8.1.1~~ Certificates of Inspection as called for in §4-8.1 of these Regulations for fire alarm signaling systems, that are located in the jurisdiction of the Jurisdictional Assistant State Fire Marshals, shall be forwarded to the appropriate Jurisdictional Assistant State Fire Marshal's office by the licensed company along with the appropriate fees, if applicable.

~~4-8.3*~~ 4-8.3 The Office of State Fire Marshal shall establish the schedule for each Fire Alarm Signaling Systems Company to forward the required Certificates of

Inspection.

~~A-4-8.3~~ 4-8.4 An Annual Certificate of Inspection shall be submitted to the Office of State Fire Marshal within 30 days of the date of the Annual Inspection.

4-9.1 Fees as charged in accordance with Part III, ~~§4-9.1~~ §4-8.1 and Appendix E of these Regulations for the submission of Certificates of Inspections shall be due and payable to the Office of State Fire Marshal according to the provisions of Part III, Chapter 1, ~~§1-4.1.6~~ 1-4.1.4 of these Regulations.

4-9.1.1 Fees as called for in Part III §4-8.1 of these Regulations for fire alarm signaling systems, that are located in the jurisdiction of the Jurisdictional Fire Marshals, shall be due and payable to the appropriate Jurisdictional Fire Marshal's office, if applicable.

4-10 Compliance

4-10.1 The failure of the licensed company to comply with the provisions of this Section shall constitute a violation of the Delaware State Fire Prevention Regulations.

Part III; Chapter 5

Licensing Regulations For Fire Suppression Systems

5-2 Fire Suppression System. Consists of an automatic or manual system designed to protect the interior or exterior of a building or structure from fire. Such systems include, but are not limited to, water systems, water spray systems, foam-water systems, foam-water spray systems, CO₂ systems, foam extinguishing systems, dry chemical systems, ~~halon~~ clean agent and other chemical systems used for fire protection use. Such systems also include the overhead and fire mains, standpipes and hose connections to systems, tank heaters, air lines, thermal systems used in connection with sprinklers and tanks and pumps connected thereto. Fire alarm systems, small pre-engineered fire suppression systems, portable fire extinguishers and wheeled fire extinguishers are covered under other Regulations of the Fire Prevention Commission. It is further defined that a separate fire suppression system consists of a series of sprinkler or like nozzles connected to a piping system which are controlled by a main control valve and are designed and installed to function as one system.

~~Fire Suppression Systems Company, Existing. Shall mean a person, organization, or entity that meets the definition of FIRE SUPPRESSION SYSTEMS COMPANY (VENDOR) who can clearly demonstrate performing work of this nature prior to the effective date of this Regulation.~~

Preparing Technical Documents. Shall mean the preparation of detailed fire suppression system drawings, calculations, and specifications for installation in accordance with the applicable codes, statutes and regulations adopted

by the ~~State of Delaware~~ State Fire Prevention Commission. It is further defined to mean that the technical documents, specifications, and design drawings referred to in this Section are the documents which shall be submitted to the Office of State Fire Marshal for review and approval.

Responsible Charge. Shall mean the individual, who is responsible to ensure that all of the requirements of the ~~State of Delaware~~ State Fire Prevention Regulations are complied with in the application of those standards and specifications to fire suppression systems. The person, or persons, of responsible charge shall be accountable for each phase of the following activities with respect to fire suppression systems, when such activities constitute an element of their particular Class of Certificate:

5-3.4.3 Insurance Certificates filed with the Office of State Fire Marshal under this Section shall remain current and in force until the insurer has terminated future liability by a ~~30~~ 10 day notice to the Office of State Fire Marshal.

5-4.1.2 The Certificate holder is the individual in RESPONSIBLE CHARGE of ensuring that the functions for which they have been certified have been performed in accordance with the standards and specifications of the ~~State of Delaware~~ State Fire Prevention Regulations.

5-4.2.3 Class III: Limited to engineered systems in the following categories:

III(b) Limited to ~~halon~~ clean agent fire suppression systems.

5-4.2.5 Class V: Limited to pre-engineered systems in the following categories:

V(b) Limited to pre-engineered ~~halon~~ clean agent fire suppression systems

5-4.3.1 To qualify as a Certificate Holder an individual shall:

(d) Have passed an examination prescribed by the Delaware State Fire Prevention Commission or an equivalent examination approved by the Delaware State Fire Prevention Commission. Any examination that has been passed as prescribed by the Delaware State Fire Prevention Commission, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.

~~(e) To be utilized in the Certification process, any examination that has been passed as prescribed by the State Fire Prevention Commission in (d) above, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.~~

~~(f)~~ (e) For the purposes of this Regulation, a Registered Delaware Professional Engineer shall be recognized as a Certificate Holder without further qualification.

~~5-5 Existing Fire Suppression Systems Companies.~~

~~5-5.1 Existing companies shall have until December 31, 1991 to comply with the certification requirements herein.~~

~~5-5.2 Any company may apply for a single extension of six months which may be granted at the discretion of the Delaware State Fire Prevention Commission for the purpose of complying with the licensing requirements of this Regulation.~~

~~5-5.3 The individual or individuals who submit an application for certification must be able to demonstrate at least three years experience in the preparation of technical documents, installation, inspection, testing or maintenance of fire suppression systems, in order to have a provisional license issued under this Section.~~

~~5-5.4 Notwithstanding the provisions of §5-5.2, those companies that have applied for and have been granted an extension as provided for in §5-5.2 by the Delaware State Fire Prevention Commission, shall have until June 30, 1993 for the purpose of complying with the licensing requirements of this Regulation.~~

~~5-5.5* Notwithstanding the provisions of §4-5.2 and §4-5.4, those individuals, who have attended any training seminars or who have sat for any testing process associated with the licensing requirements of these Regulations, shall have until June 30, 1993, to comply with the certification requirements of this Regulation.~~

~~A-5-5.5 It is the express intent of the Delaware State Fire Prevention Commission that any individual who has attended a training seminar or who has sat for any of the testing requirements associated with the licensing requirements of these Regulations, shall have until June 30, 1993 to comply with the certification requirements of these Regulations, pursuant to the action of the Commission of February 18, 1992.~~

5-5 (Reserved)

5-6.6:

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission ~~of the State of Delaware;~~

5-6.7 Any person aggrieved by an order or decision of the State Fire Marshal with respect to the provisions of this Chapter may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del. C. §6608 and in accordance with the provisions of these Regulations.

5-8.1 The licensed company's ~~Certificate Holder~~ is responsible to forward to the Office of State Fire Marshal, on the prescribed form, a separate Annual Certificate of Inspection, along with the appropriate fees for all such fire suppression systems that the licensed company may inspect, test, or maintain. This Certificate of Inspection, which must be submitted annually, shall verify that the ~~State of Delaware~~

State Fire Prevention Regulations standards and specifications regarding the inspection, testing, or maintenance have been met and any deficiencies noted at the time of the annual inspection, testing, or maintenance shall be noted, with corrective action, if any, taken.

Exception: Certificates of Inspection are not required to be submitted for One-and-Two Family Dwellings.

~~to~~ 5-8.1.1 Certificates of Inspection as called for in §5-8.1 of these Regulations for fire suppression systems, that are located in the jurisdiction of the Jurisdictional Assistant State Fire Marshals, shall be forwarded to the appropriate Jurisdictional Assistant State Fire Marshal's office by the licensed company along with the appropriate fees, if applicable.

~~5-8.3~~ 5-8.3 The Office of State Fire Marshal shall establish the schedule for each Fire Suppression Systems Company to forward the required Certificates of Inspection.

~~A-5-8.35-8.4~~ An Annual Certificate of Inspection shall be submitted to the Office of State Fire Marshal within 30 days of the date of the Annual Inspection.

5-9.1 Fees as charged in accordance with Part III, ~~§5-9.1~~ §5-8.1 and Appendix E of these Regulations for the submission of Certificates of Inspections shall be due and payable to the Office of State Fire Marshal according to the provisions of Part III, Chapter 1, ~~§1-4.1.6~~ 1-4.1.4 of these Regulations.

5-9.1.1 Fees as called for in Part III §5-8.1 of these Regulations for fire suppression systems, that are located in the jurisdiction of the Jurisdictional Fire Marshals, shall be due and payable to the appropriate Jurisdictional Fire Marshal's office, if applicable.

5-10 Compliance

5-10.1 The failure of the licensed company to comply with the provisions of this Section shall constitute a violation of the Delaware State Fire Prevention Regulations.

**Part III; Chapter 6
Licensing Regulations For Fire Alarm Signaling Systems
In-house Licensee's**

~~6-2 Fire Alarm Signaling Systems In-House Licensee/Existing (In-House Licensee/Existing). Shall mean a person, organization or entity that meets the definition of a FIRE ALARM SIGNALING SYSTEMS COMPANY IN-HOUSE LICENSEE, who can clearly demonstrate performing work of this nature prior to the effective date of this Regulation.~~

Preparing Technical Documents. Shall mean the preparation of detailed fire alarm signaling system drawings, calculations and specifications for installation in accordance with the applicable codes, statutes and regulations adopted by the ~~State of Delaware~~ State Fire Prevention Commission. It is further defined to mean that the technical documents,

specifications and design drawings referred to in this Section are the documents which shall be submitted to the Office of State Fire Marshal for review and approval.

Responsible Charge. Shall mean the individual, who is responsible to ensure that all of the requirements of the ~~State of Delaware~~ State Fire Prevention Regulations are complied with in the application of those standards and specifications to fire alarm signaling systems. The person, or persons, of responsible charge shall be accountable for each phase of the ~~following~~ activities with respect to fire alarm signaling systems, when such activities constitute an element of their particular Class of Certificate:

~~(a) Preparation of technical documents, including review and approval by the Office of State Fire Marshal.~~

~~(b) Installation of fire alarm signaling systems.~~

~~(c) Inspection, Testing, and Maintenance including but not limited to installation testing, acceptance testing, and any other inspections, testing, or maintenance as required under these Regulations.~~

~~(d) Submission of all reports, technical documents or Certificates of Inspection and any other materials required to be prepared, recorded or submitted under these Regulations.~~

~~6-3.3.1. The In-House Licensee shall be limited to performing functions related only to those types of activities for which the Certificate Holder has been certified. The In-House Licensee shall be limited to performing testing, inspection, and maintenance functions only to those types of fire alarm signaling systems for which the Certificate Holder has been certified.~~

6-3.4.3 Insurance Certificates filed with the Office of State Fire Marshal under this Section shall remain current and in force until the insurer has terminated future liability by a ~~30~~ ten (10) day notice to the Office of State Fire Marshal.

6-4.1.2 The Certificate Holder is the person in RESPONSIBLE CHARGE of ensuring that the required Inspection, Testing, and Maintenance Services, for which they have been certified, have been performed in accordance with the standards and specifications of the ~~State of Delaware~~ State Fire Prevention Regulations.

6-4.2.1 Class VIII: Limited to Inspection, Testing, and Maintenance Service of wholly owned or proprietary fire alarm signaling systems in accordance with the PURPOSE, SCOPE AND APPLICATION; AND DEFINITIONS, for the periodic and annual inspection, testing, or maintenance requirements of the ~~State of Delaware~~ State Fire Prevention Regulations. This class of certificate is reserved for those In-House Licensees as defined in §6-2 of this Chapter.

6-4.3.1 To qualify as a Certificate Holder, an individual shall:

(d) Have passed an examination prescribed by the Delaware State Fire Prevention Commission or an equivalent examination approved by the Delaware State Fire

~~Prevention Commission; Any examination that has been passed as prescribed by the Delaware State Fire Prevention Commission must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.~~

~~(e) To be utilized in the Certification process, any examination that has been passed as prescribed by the State Fire Prevention Commission in (d) above, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.~~

~~(f)(e) For the purposes of this Regulation, a Registered Delaware Professional Engineer shall be recognized as a Certificate Holder without further qualification.~~

6-5 Fire Alarm Signaling Systems In-House/ Existing.

~~6-5.1 In-House Licensees/Existing shall have until December 31, 1994, to comply with the licensing requirements of this Regulation.~~

~~6-5.2 The In-House Licensee/Existing shall make application to the Office of State Fire Marshal for such status and will be issued a conditional license to carry out the provisions of these Regulations in their facilities pending the completion of the certification process for a Certificate Holder which must be completed by December 31, 1994. The prescribed license fee shall be paid at the time of application and when all of the requirements for licensing as prescribed by these Regulations for a Conditional License have been met, the State Fire Marshal will issue such Conditional License. The requirements for obtaining this Conditional License shall be in accordance with §6-3 of this Chapter.~~

~~6-5.3 The In-House Licensee/Existing shall submit an application for a least one individual who will be designated the Certificate Holder for the purpose of obtaining a Conditional License. The prescribed fee for the Certificate Holder(s) will be paid to the Office of State Fire Marshal at the time of application.~~

~~6-5.4 The individual or individuals who submit an application must be able to demonstrate at least three years experience in the inspection, testing, or maintenance of fire alarm signaling systems, in order to have the In-House Licensee/Existing be issued a Conditional License under this Section.~~

6-5 (Reserved)

6-6.6

~~(b) Is guilty of gross negligence, incompetence, or misconduct in the preparation of technical documents, installation, inspection, testing or maintenance of a fire alarm signaling system;~~

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission ~~of the State of Delaware;~~

6-6.7 Any person aggrieved by an order or decision of the State Fire Marshal with respect to the provisions of this Chapter may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del. C. §6608 and in accordance with the provisions of these Regulations.

6-8 Submission Of Certificates Of Inspection.

~~6-8.1*~~ 6-8.1 The In-House Licensee's Certificate Holder licensed company is responsible to forward to the Office of State Fire Marshal, on the prescribed form, a separate Certificate of Inspection, along with the appropriate fees, for each fire alarm signaling system that the In-House Licensee licensed company may inspect, test or maintain. This Certificate of Inspection, which must be submitted annually, shall verify that the ~~State of Delaware~~ State Fire Prevention Regulations standards and specifications regarding the inspection, testing or maintenance have been met and any deficiencies noted at the time of the annual inspection, testing or maintenance shall be noted, with corrective action, if any, taken.

~~(a) 6-8.1.1 Certificates of Inspection as called for in §6-8.1 of these Regulations for fire alarm signaling systems that are located in the jurisdiction of the Jurisdictional Assistant State Fire Marshals, shall have copies of such certificates forwarded to the appropriate Assistant State Fire Marshal by the State Fire Marshal shall be forwarded to the appropriate Jurisdictional Fire Marshal's office by the licensed company along with the appropriate fees, if applicable.~~

~~A-6-8.1 Certificates of Inspection are a function of the licensing Program and as the licensing authority, the Delaware State Fire Prevention Commission/State Fire Marshal, shall receive all such certificates and associated fees, if any. The State Fire Marshal shall forward a copy of the Certificate of Inspection for all fire alarm signaling systems, fire suppression systems and other fire protection systems that are located within the jurisdiction of the Assistant State Fire Marshals to those jurisdictions. The single collection point for such certificates will greatly enhance the administration and management of the licensing program and will eliminate any confusion to the vendors, contractors or to the public as to where to send such certificates.~~

6-8.4 An Annual Certificate of Inspection shall be submitted to the Office of State Fire Marshal within 30 days of the date of the Annual Inspection.

~~6-9.1 The State Fire Marshal shall charge such fees in the application of these Regulations as defined in Appendix E of these Regulations.~~

6-9.1 Fees as charged in accordance with Part III, §6-8.1 and Appendix E of these Regulations for the submission

of Certificates of Inspections shall be due and payable to the Office of State Fire Marshal according to the provisions of Part III, Chapter 1, 1-4.1.4 of these Regulations.

6-9.1.1 Fees as called for in Part III §6-8.1 of these Regulations for fire alarm signaling systems, that are located in the jurisdiction of the Jurisdictional Fire Marshals, shall be due and payable to the appropriate Jurisdictional Fire Marshal's office, if applicable.

6-10 Compliance

6-10.1 The failure of the licensed company to comply with the provisions of this Section shall constitute a violation of the Delaware State Fire Prevention Regulations.

Part III; Chapter 7

Licensing Regulations For Fire Suppression Systems In-house Licensee's

7-2 Fire Suppression System. Consists of an automatic or manual system designed to protect the interior or exterior of a building or structure from fire. Such systems include, but are not limited to, water systems, water spray systems, foam-water systems, foam-water spray systems, CO₂ systems, foam extinguishing systems, dry chemical systems, ~~halon~~ clean agent and other chemical systems used for fire protection use. Such systems also include the overhead and fire mains, standpipes and hose connections to systems, tank heaters, air lines, thermal systems used in connection with sprinklers and tanks and pumps connected thereto. Fire alarm systems, small pre-engineered fire suppression systems, portable fire extinguishers and wheeled fire extinguishers are covered under other Regulations of the Fire Prevention Commission. It is further defined that a separate fire suppression system consists of a series of sprinkler or like nozzles connected to a piping system which are controlled by a main control valve and are designed and installed to function as one system.

~~Fire Suppression Systems In-House Licensee/ Existing (In-House Licensee/Existing). Where used in this Chapter, shall mean a person, organization or entity that meets the definitions of a FIRE SUPPRESSION SYSTEMS IN-HOUSE LICENSEE, who can clearly demonstrate performing work of this nature prior to the effective date of this Regulation.~~

Preparing Technical Documents. Shall mean the preparation of detailed fire suppression system drawings, calculations, and specifications for installation in accordance with the applicable codes, statutes and regulations adopted by the ~~State of Delaware~~ State Fire Prevention Commission. It is further defined to mean that the technical documents, specifications and design drawings referred to in this Section are the documents which shall be submitted to the Office of State Fire Marshal for review and approval.

Responsible Charge. Shall mean the individual, who is responsible to ensure that all of the requirements of the ~~State of Delaware~~ State Fire Prevention Regulations are complied with in the application of those standards and specifications to fire suppression systems. The person, or persons, of responsible charge shall be accountable for each phase of ~~the following~~ activities with respect to fire suppression systems when such activities constitute an element of their particular Class of Certificate:

~~(a) Preparation of technical documents, including review and approval by the Office of State Fire Marshal;~~

~~(b) Installation of fire suppression systems;~~

~~(c) Inspection, Testing, and Maintenance including, but not limited to, installation testing, acceptance testing, any inspection, testing or maintenance as required under these Regulations;~~

~~(d) Submission of all reports, technical documents, Certificates of Inspection and any other materials required to be prepared, recorded or submitted under these Regulations.~~

7-3.3.1 The In-House Licensee shall be limited to performing testing, inspection, and maintenance functions related only to those types of activities for which the Certificate Holder has been certified.

7-3.4.3 Insurance Certificates filed with the Office of State Fire Marshal under this Section shall remain current and in force until the insurer has terminated future liability by a ~~30~~ ten (10) day notice to the Office of State Fire Marshal.

7-4.1.2 The Certificate Holder is the person in RESPONSIBLE CHARGE of ensuring that the required Inspection, Testing, and Maintenance Services, for which they have been certified, have been performed in accordance with the standards and specifications of the ~~State of Delaware~~ State Fire Prevention Regulations.

7-4.2.1 Class VIII: Limited to Inspection, Testing, or Maintenance Service of wholly owned or proprietary fire suppression systems in accordance with the PURPOSE, SCOPE AND APPLICATION; AND DEFINITIONS, for the periodic and annual inspection, testing or maintenance requirements of the ~~State of Delaware~~ State Fire Prevention Regulations. This class of certificate is reserved for those In-House Licensees as defined in §7-2 of this Chapter.

7-4.3.1 To qualify as a Certificate Holder, an individual shall:

(d) Have passed an examination prescribed by the Delaware State Fire Prevention Commission or an equivalent examination approved by the Delaware State Fire Prevention Commission. Any examination that has been passed as prescribed by the Delaware State Fire Prevention Commission must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.

~~(e) To be utilized in the Certification process, any examination that has been passed as prescribed by the State Fire Prevention Commission in (d) above, must have been completed within five (5) years of the application date or, when an individual submits such examination results for the Commission's review and acceptance.~~

~~(f)(e)~~ For the purposes of this Regulation, a Registered Delaware Professional Engineer shall be recognized as a Certificate Holder without further qualification.

~~7-5 Fire Suppression Systems In-House Licensee/Existing~~

~~7-5.1 In-House Licensees/Existing shall have until December 31, 1994, to comply with the licensing requirements of this Regulation.~~

~~7-5.2 The In-House Licensee/Existing shall make application to the Office of State Fire Marshal for such status and will be issued a conditional license to carry out the provisions of these Regulations in their facilities pending the completion of the certification process for a Certificate Holder which must be completed by December 31, 1994. The prescribed license fee shall be paid at the time of application and when all of the requirements for licensing as prescribed by these Regulations for a Conditional License have been met, the State Fire Marshal will issue such Conditional License. The requirements for obtaining this Conditional License shall be in accordance with Section 7-3 of this Chapter.~~

~~7-5.3 The In-House Licensee/Existing shall submit an application for at least one individual who will be designated the Certificate Holder for the purpose of obtaining a Conditional License. The prescribed fee for the Certificate Holder(s) will be paid to the Office of State Fire Marshal at the time of application.~~

~~7-5.4 The individual or individuals who submit an application must be able to demonstrate at least three years experience in the inspection, testing or maintenance of fire suppression systems, in order to have the In-House Licensee/Existing be issued a Conditional License under this Section.~~

7-5 (Reserved)

7-6.6

(b) Is guilty of gross negligence, incompetence, or misconduct in the ~~preparation of technical documents, installation,~~ inspection, testing or maintenance of a fire alarm signaling system;

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission ~~of the State of Delaware;~~

7-6.7 Any person aggrieved by an order or decision of the State Fire Marshal with respect to the provisions of this Chapter may file an appeal to the Delaware State Fire

Prevention Commission pursuant to 16 Del. C. §6608 and in accordance with the provisions of these Regulations.

~~7-8.1*~~ 7-8.1 The In-House Licensee's Certificate Holder licensed company is responsible to forward to the Office of State Fire Marshal, on the prescribed form, a separate Certificate of Inspection, along with the appropriate fees, for each fire suppression system that the In-House Licensee licensed company may inspect, test or maintain. This Certificate of Inspection, which must be submitted annually, shall verify that the ~~State of Delaware~~ State Fire Prevention Regulations standards and specifications regarding the inspection, testing or maintenance have been met and any deficiencies noted at the time of the annual inspection, testing or maintenance shall be noted, with corrective action, if any, taken.

a) 7-8.1.1 Certificates of Inspection as called for in §7-8.1 of these Regulations for fire suppression systems that are located in the jurisdiction of the Jurisdictional Assistant State Fire Marshals, ~~shall have copies of such certificates forwarded to the appropriate Assistant State Fire Marshal by the State Fire Marshal shall be forwarded to the appropriate Jurisdictional Fire Marshal's office by the licensed company along with the appropriate fees, if applicable.~~

~~A-7-8.1 Certificates of Inspection are a function of the licensing Program and as the licensing authority, the Delaware State Fire Prevention Commission/State Fire Marshal, shall receive all such certificates and associated fees, if any. The State Fire Marshal shall forward a copy of the Certificate of Inspection for all fire alarm signaling systems, fire suppression systems and other fire protection systems that are located within the jurisdiction of the Assistant State Fire Marshals to those jurisdictions. The single collection point for such certificates will greatly enhance the administration and management of the licensing program and will eliminate any confusion to the vendors, contractors or to the public as to where to send such certificates.~~

7-8.4 An Annual Certificate of Inspection shall be submitted to the Office of State Fire Marshal within 30 days of the date of the Annual Inspection.

~~7-9.1 The State Fire Marshal shall charge such fees in the application of these Regulations as defined in Appendix E of these Regulations.~~

7-9.1 Fees as charged in accordance with Part III, §7-8.1 and Appendix E of these Regulations for the submission of Certificates of Inspections shall be due and payable to the Office of State Fire Marshal according to the provisions of Part III, Chapter 1, 1-4.1.4 of these Regulations.

7-9.1.1 Fees as called for in Part III §7-8.1 of these Regulations for fire suppression systems, that are located in the jurisdiction of the Jurisdictional Fire Marshals, shall be due and payable to the appropriate Jurisdictional

Fire Marshal's office, if applicable.

7-10 Compliance

7-10.1 The failure of the licensed company to comply with the provisions of this Section shall constitute a violation of the Delaware State Fire Prevention Regulations.

Part III; Chapter 8

Licensing And Reporting Requirements For Central Station And Remote Station Services

8-1.2 Scope. In addition to the nationally recognized codes and standards as adopted and/or modified by these Regulations, this Regulation establishes minimum requirements for the licensing and reporting requirements for central station and remote station services, fire protection monitoring services, and individuals, firms, organizations, or businesses by any other name which monitor any fire alarm signaling system, fire suppression system, or any fire protection system with an objective of receiving alarms from protected properties and then transmitting the alarm to an emergency fire dispatch center or fire department.

8-3.4.3 Insurance Certificates filed with the Office of State Fire Marshal under this section shall remain current and in force until the insurer has terminated future liability by a ~~30~~ ten (10) day notice to the Office of State Fire Marshal.

8-4.1.1 All licensees must maintain in their alarm receiving location and must provide the appropriate emergency fire dispatch center and jurisdictional fire department the following records:

8-5.6

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission of the State of Delaware;

8-5.7 Any person aggrieved by an order or decision of the State Fire Marshal with respect to the provisions of this Chapter may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del. C. §6608 and in accordance with the provisions of these Regulations.

8-6 Compliance Dates.

8-6.1 Licensing Requirement.

~~8-6.1.1 All central station, remote station, and systems monitoring companies shall file an application for licensing under this Regulation within 30 days of the effective date.~~

8-6.2 Reporting And Records Requirements.

~~8-6.2.1 All licensees shall be in compliance with the reporting requirements of this Regulation 60 days after the effective date.~~

8-6.3 Effective Date.

~~8-6.3.1 The effective date of this Regulation will be July 1, 1997.~~

Part IV; Chapter 2 - Fireworks Display

2.1.1.1 Pursuant to 16 Del. C. Chapter 69, no person shall store, sell, offer or expose for sale, or have in possession with intent to sell or to use, discharge or cause to be discharged, ignited, fired or otherwise set in action within this State, any fireworks, firecrackers, rockets, sparklers, torpedoes, Roman candles, fire balloons or other fireworks or substances of any combination whatsoever designed or intended for pyrotechnic display except as otherwise provided for in this Regulation

2-2.3 The application for a permit for a public display of fireworks shall be accompanied by the following:

(a) ~~A bond in the principle sum of five thousand dollars (\$5,000.00) payable to the State indemnifying any person who receives or sustains injury to his person or property by reason of any discharge of the fireworks by the applicant or anyone acting for or on his behalf. Any such person receiving or sustaining injury may sue on the bond in the name of the State to recover damages for such injury and the Attorney General shall represent such person in the action. [16 Del. C. §6903 (e)]~~

(b) ~~A certificate of insurance in the amount of \$500,000.00 naming the sponsoring organization and the operator of the display as co-insured.~~

(a) A certificate of insurance issued by a bona fide insurance company licensed by the State Insurance Commissioner showing a minimum of \$1,000,000 liability insurance per event pursuant to 16 Del. C. §6903 (c).

(e)(b) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways, streets, roads, the lines behind which the audience or spectators will be restrained, and the location of all nearby trees, telegraph, or telephone lines or other overhead obstructions.

(d)(c) A check in the amount prescribed in Appendix E of these Regulations and made payable to THE STATE OF DELAWARE.

2-2.5 No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this chapter, 16 Del. C., Chapter 69, the Code for Fireworks Display, N.F.P.A. 1123 and the Standard for the Use of Pyrotechnics before a Proximate Audience, N.F.P.A. 1126. A permit shall only be issued after a satisfactory site inspection has been completed.

2-3.1.10 The State Fire Marshal shall have the authority to apply any provision from the ~~Standard for Public Display of Fireworks, NFPA 1123~~ Code for Fireworks Display, N.F.P.A. 1123 and the Standard for the Use of Pyrotechnics before a Proximate Audience, N.F.P.A. 1126, as adopted and/or modified by these Regulations, as the standards for any provision not specifically covered in this Chapter or in 16 Del. C., Chapter 69.

2-5.1.11 Any person, who has their license suspended or revoked under the provisions of this Chapter or any other Chapter of these regulations, may appeal the action of suspension or revocation to the Delaware State Fire Prevention Commission under the provisions set forth in Part I, Chapter 1 of these Regulations.

Part IV; Chapter 3 - Explosives, Ammunition, Blasting Agents

3-1.4 No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this chapter, 16 Del. C., Chapter 70, and the Explosive Materials Code, N.F.P.A. 495. A permit shall only be issued after a satisfactory site inspection has been completed.

3-2.2 The above log shall be in a bound type book and shall be kept on each job site and date entered with each shot. The log shall be made immediately available to the State Fire Marshal or authorized designee upon request.

~~3-6.1 The transportation of explosives shall comply with the provisions of The Hazardous Materials Transportation Act as provided in 29 Del. C. §8223 through §8230. A permit is required from the State Fire Marshal for the transportation of explosives within the State of Delaware. No permit shall be issued until the vehicle is inspected by the State Fire Marshal. The vehicle inspection shall cover all regulations in this chapter, 16 Del. C., Chapter 71 and the Hazardous Materials Transportation Act, as provided in 29 Del. C. §8223 through §8230.~~

Part IV; Chapter 4 - Amusement Ride Safety

4-2 Application For Permit For Amusement Rides

4-2.1 Any association or company desiring to operate a public amusement shall apply to the State Fire Marshal for a permit to operate such amusement at least 7 days prior to the first date of operating the amusement.

4-2.2 Such application for a permit for a public amusements shall set forth:

(a) The name and address of the organization sponsoring the amusements.

(b) The name, address and telephone number of an individual from the sponsoring organization who will be the contact person for the Office of State Fire Marshal.

(c) The times of day and dates when the amusements will open to the public.

(d) The exact location planned for the amusements..

(e) The signature of the contact person from the sponsoring organization.

~~4-2~~ 4-3 Electrical Inspection Required.

~~4-2.1~~ 4-3.1 Each time an amusement ride as defined in 16 Del. C., Chapter 64, is set-up, assembled, or otherwise

made ready for public use or occupancy or in any way in which a person may come in contact with the amusement ride, an electrical inspection shall be conducted by a recognized electrical inspection agency, as certified by the Delaware State Board of Electrical Examiners.

~~4-2.2~~ 4-3.2 The inspection shall determine that all provisions of the National Electric Code, NFPA 70, as adopted and/or modified by these Regulations, have been complied with.

~~4-2.3~~ 4-3.3 A report shall be issued to the State Fire Marshal from the electrical inspection agency containing the following information:

~~4-3~~ Handling Of Complaints.

~~4-3.1 Whenever the State Fire Marshal has reason to believe that continued operation of an amusement ride constitutes a threat to life safety, the State Fire Marshal shall have the authority to issue a summary abatement in accordance with the provisions of Part I, Chapter 1 of these Regulations.~~

~~4-3.2 Such summary abatement shall remain in effect until the Office of State Fire Marshal is satisfied that the hazard to life has been corrected.~~

4-5.1 No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this chapter and 16 Del. C., Chapter 64. A permit shall only be issued after a satisfactory site inspection has been completed.

~~4-6~~ Handling Of Complaints.

~~4-6.1 Whenever the State Fire Marshal has reason to believe that continued operation of an amusement ride constitutes a threat to life safety, the State Fire Marshal shall have the authority to issue a summary abatement in accordance with the provisions of Part I, Chapter 1 of these Regulations.~~

~~4-6.2 Such summary abatement shall remain in effect until the Office of State Fire Marshal is satisfied that the hazard to life has been corrected.~~

Part V; Chapter 5 Standard For The Marking, Identification, And Accessibility Of Fire Lanes, Exits, Fire Hydrants, Sprinkler, And Standpipe Connections

5-1.1.3 The revisions to the Regulation that affect marking of fire lanes shall take effect on January 1, 2004.

5-1.4.1 Fire Lane: A paved roadway surface that provides unobstructed access to a building for Fire Department apparatus and any other emergency vehicles at all times.

5-2.11 Enforcement action regarding stopping, standing or parking a vehicle within 15 feet of a fire hydrant shall be as prescribed in this regulation and 21 Del. C. 417 and

21 Del. C. §7001 and/or 21 Del C§4179.

5-2.12 ~~Four~~ Three copies of an independent and specific record type plan shall be submitted to the State Fire Marshal's Office providing specific identification and marking details of access roadways, fire lanes, fire department connections, and fire hydrants.

5-3.1 Where emergency services have to utilize access roadways between public streets or roads to reach designated fire lanes, such access roadways shall be a minimum of 24 feet in width and constructed to meet the minimum engineering specifications and/or requirements ~~to support emergency apparatus pursuant to the Delaware Department of Transportation requirements for paved roadways.~~

5-3.2 Access roadways with no parking on one or both sides shall be marked as follows:

Curbs painted yellow or a yellow demarcation line lines as illustrated in the appropriate section of this regulation

5-4.4* 5-4.4 The minimum width of primary and/or secondary fire lanes may be reduced when, in the opinion of the State Fire Marshal, the reduced width will not impact on the accessibility of fire department emergency vehicles.

~~A-5.4.4 The intent of this section is to allow the State Fire Marshall to accept a primary and/or secondary fire lane width less than what is required by these Regulations.~~

5-4.5 Fire lanes shall be constructed to meet the minimum engineering specifications and/or requirements ~~to support emergency apparatus pursuant to the Delaware Department of Transportation requirements for paved roadways.~~

5-5.4 ~~Fire lanes~~ The closest edge of fire lanes, both primary and secondary, shall not be located further than 50 feet from an exterior wall if one or two stories; 40 feet if three or four stories and 30 feet if over four stories in height.

5-6.1.2 Fire lanes with no parking between the fire lane and the building shall be marked as follows:

(a) Curbs painted yellow or 4 inch yellow demarcation lines ~~on both the inner and outer edges of the fire lane(s).~~ as follows:

1. Both the inner and outer edges of the fire lane marked with curbs painted yellow, or

2. The inner edge of the fire lane marked with a curb painted yellow and the outer edge of the fire lane marked with a four inch (4") yellow demarcation line, or

3. The inner edge of the fire lane marked with a four inch (4") yellow demarcation line and the outer edge of the fire lane marked with a curb painted yellow, or

4. Both the inner and outer edges of the fire lane marked with four inch (4") yellow demarcation lines.

(b) Signs, ~~posted along the~~ shall be posted along the inner curb, building line, or edge of the roadway placed at each end of the fire lane and spaced at 150 foot intervals maximum. ~~All signs shall be located no less than~~

six feet and no higher than eight feet above the pavement.

(c) Where the four inch yellow demarcation line of the outer edge of a fire lane intersects an access roadway or parking lot aisle, it may be marked as follows.

1. A solid four inch yellow demarcation line may continue to run across the intersection of the access roadway or parking lot aisle, or

2. A broken (intermittent) four inch yellow demarcation line may continue to run across the intersection of the access roadway or parking lot aisle, or

3. The solid four inch yellow demarcation line may be omitted at the intersection of the access roadway or parking lot aisle but shall continue for the remainder of the fire lane where it does not intersect an access roadway or parking lot aisle.

5-6.1.3 ~~Fire lanes with permitted parking between the fire lane and the building shall not require any form of marking.~~

Fire lanes with permitted parking between the fire lane and the building shall be marked as follows:

(a) 4 inch yellow demarcation lines on both the inner edge and outer edge of the fire lane(s).

(b) Roadway markings shall utilize the words "FIRE" and "LANE" and shall conform to the following specifications.

(1) The first word "FIRE" shall be closest to a driver approaching such marking;

(2) Each word shall be at least ten feet in height and 20 feet or 12 feet in width, on center, conforming to the width of the fire lane so as to define the location of the fire lane;

(3) This distance between the word "FIRE" and the word "LANE" shall be no greater than 30 feet; and

(4) The distance from the word "LANE" to the beginning of the second set of roadway markings where the word "FIRE" begins shall be no greater than 100 feet.

5-6.1.4 ~~When fire lanes are indicated by a curb being painted or marked yellow or a yellow line is placed at the edge of a roadway or shoulder, the minimum width of the yellow line shall be four inches (4").~~

5-9.2 All exits shall have demarcation lines of at least four inch (4") minimum width to define specific areas.

~~5-9.3 All demarcation lines shall be a minimum of four inches (4") in width.~~

~~5-9.4~~ 5-9.3 Demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

~~5-9.5~~ 5-9.4 Demarcation lines on secondary exits shall be measured from the center line of the exit way and shall extend for a distance of six feet (6') on either side to the

public way (fire lane).

~~5-9.6~~ 5-9.5 Demarcation lines need not be located on sidewalk surfaces or other pedestrian surfaces not subject to vehicular traffic but shall extend from the end of the sidewalk surface to the fire lane.

~~5-9.7~~ 5-9.6 No objects, stands, displays, or other impediments shall be located within the demarcation area.

5-9.7 When required by the State Fire Marshal, minimum four inch (4") diameter steel bollards filled with concrete and painted yellow shall be installed at the corners of the exit's demarcation area. The minimum height of the bollard shall be thirty six inches (36") above the finished grade of the adjacent surface.

~~5-9.8~~ ~~Four inch steel bollards filled with concrete and painted yellow shall be installed at the corners of the exit demarcation area~~

5-10.2 When fire hydrants are located along the curb line, the area between the fire hydrant and the fire lane shall be stenciled with 4 inch (4") demarcation lines and the words "NO PARKING", which shall extend to a distance of 15 feet on either side to be measured from the center line of the fire hydrant.

NOTE: See Figure Five – Marking of Fire Hydrant Along a Curb Line

5-10.3 Where fire hydrants are located on a curb island extension in such a manner that the hydrant is directly accessible to the access or fire lane, it will only be necessary to paint the curb island extension for the distance it traverses the access lane.

NOTE: See Figure Seven – Marking of Fire Hydrant on a Curb Island Extension

5-10.6 Where fire hydrants are located in parking lots or other areas susceptible to blockage by parked vehicles they shall be treated as follows:

(a) Fire hydrants shall be protected in all directions for a distance of seven feet (7') with barriers or curbing

(b) ~~A fire lane~~ An access roadway with a minimum of 16 feet shall run through the parking area and adjacent to the demarcation area of the fire hydrant.

(c) ~~The fire lane~~ access roadway in (b) above shall extend "from" and "to" a traffic lane.

(d) All fire hydrants shall have demarcation lines to define specific areas. All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

(e) Minimum four inch (4") diameter steel bollards filled with concrete and painted yellow shall be installed at the corners of the fire hydrant demarcation area. The minimum height of the bollard shall be thirty six inches (36") above the finished grade of the adjacent surface.

5-10.6.1 Where fire hydrants are located in parking lots on a curb island extension in such a manner that the hydrant is directly accessible to the access or fire lane, it will only be necessary to paint the curb island extension for the distance it traverses the access lane.

NOTE: See Figure Seven – Marking of Fire Hydrant on a Curb Island Extension

5-11.5 All fire ~~department connections~~ ~~standpipe and~~ ~~sprinkle connections~~ (standpipe and sprinkler) and other such like items shall have demarcation lines and shall include the words "NO PARKING" to define specific areas.

5-11.8 When required by the State Fire Marshal, minimum four inch (4") diameter steel bollards filled with concrete and painted yellow shall be installed at the corners of the demarcation area for the fire department connections. The minimum height of the bollard shall be thirty six inches (36") above the finished grade of the adjacent surface.

5-11.9 All fire department connections (standpipe and sprinkler) shall have a minimum 12" x 18" sign that reads:

FIRE DEPT.
CONNECTION

Sign lettering shall be a minimum of 3 inches (3") in height with red scotch lite letters on white scotch lite background. The sign shall be clearly visible from the fire lane or roadway.

Figure One
Marking of Primary Fire Lane with No Parking

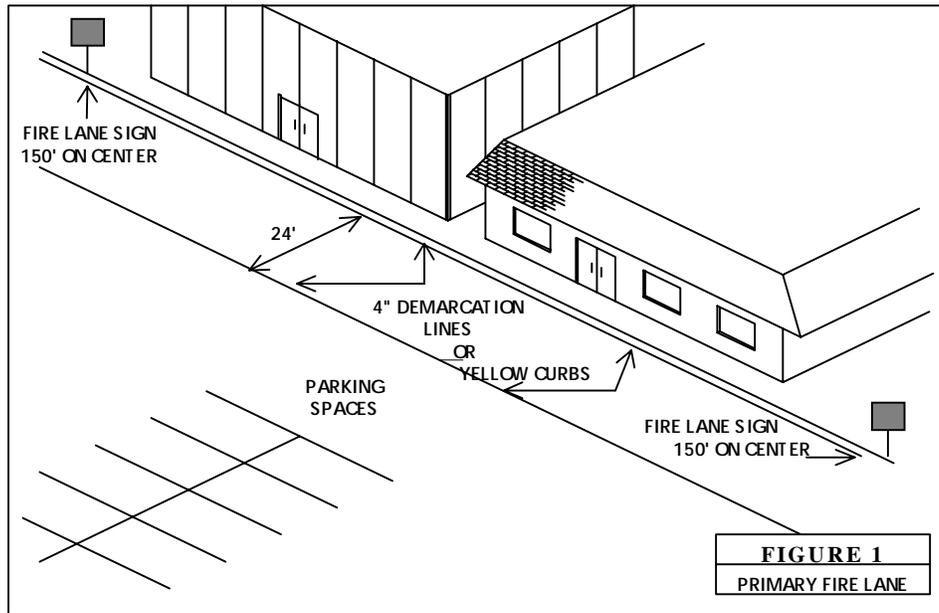
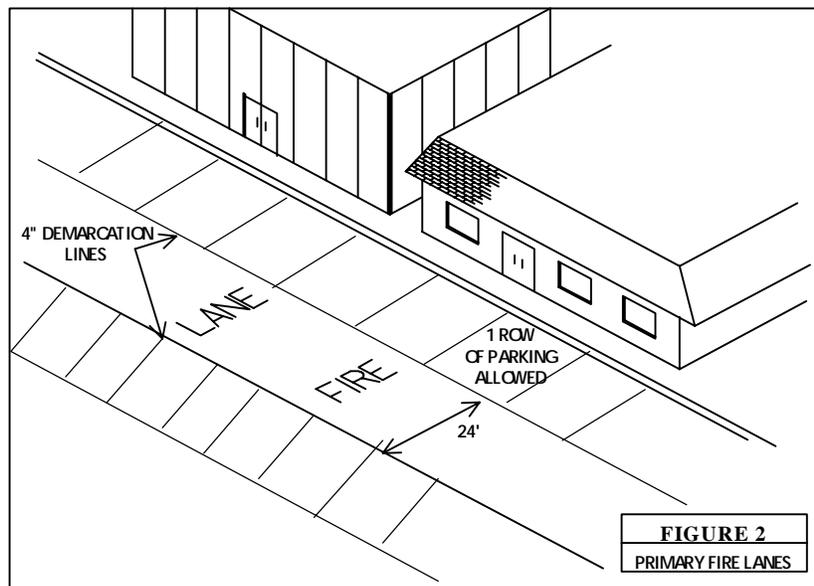


Figure Two
Marking of Primary Fire Lanes on Existing Buildings with Permitted Parking



FINAL REGULATIONS

Figure Three
Marking of Secondary Fire Lane With a Sidewalk

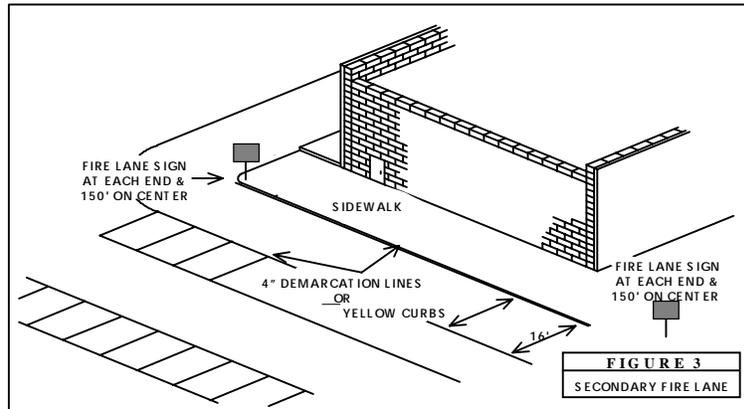


Figure Four
Marking of Secondary Fire Lane Without a Sidewalk

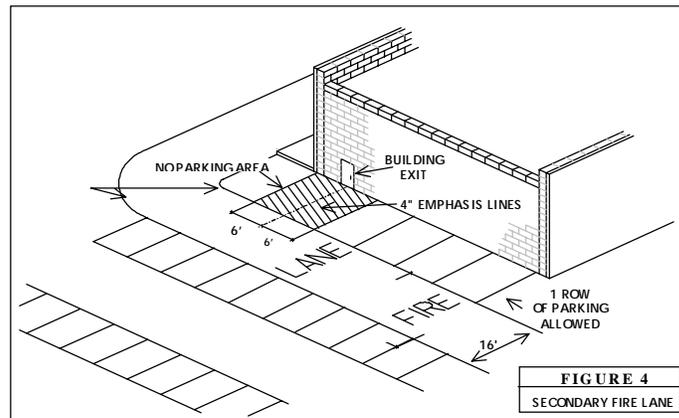


Figure Five
Marking of Fire Hydrant Along A Curb Line

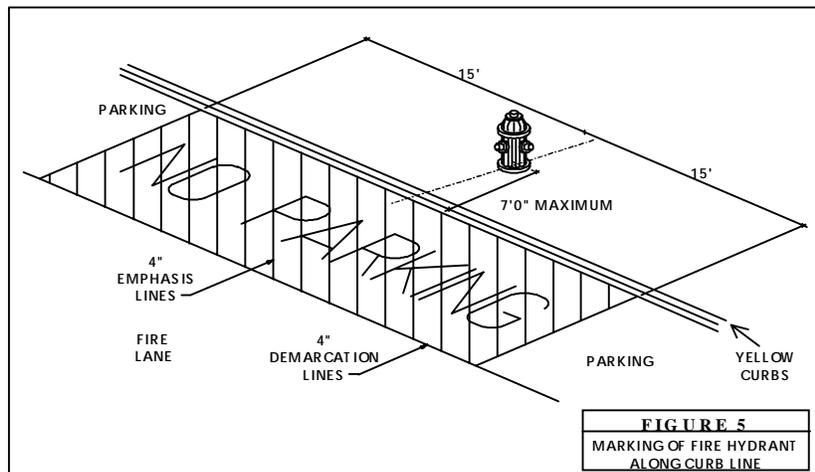


Figure Six
Marking and Protection of Fire Hydrant in Vehicle Parking Area

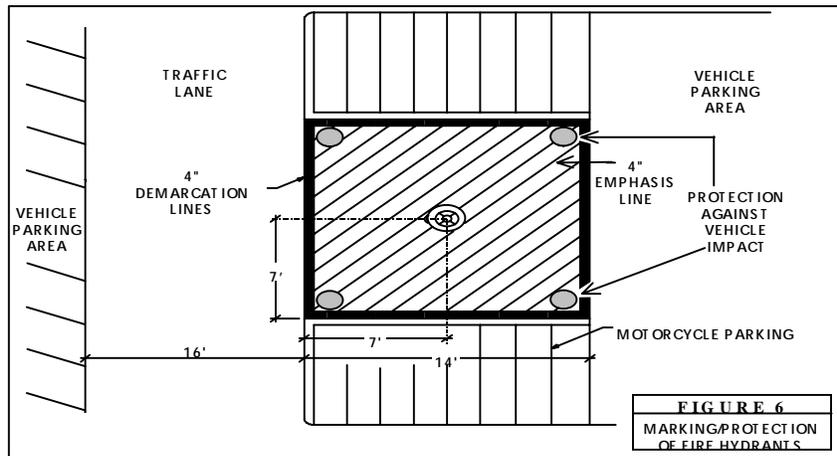


Figure Seven
Marking of Fire Hydrant on a Curb Island Extension

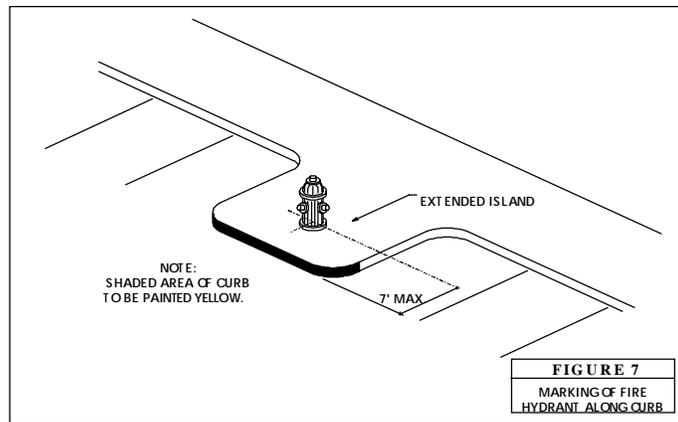
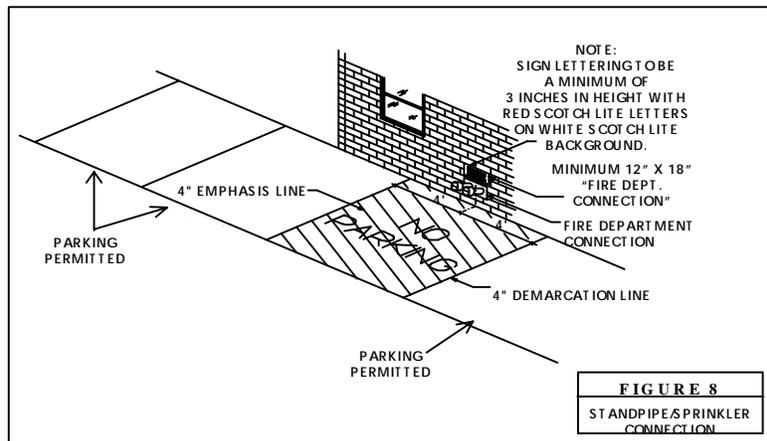
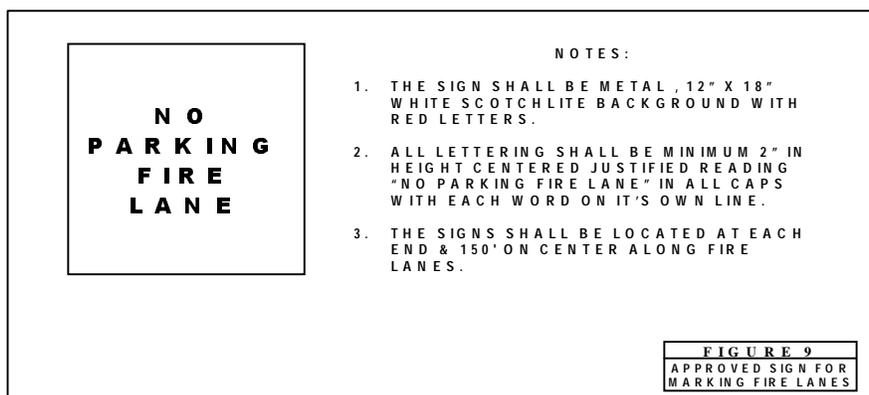
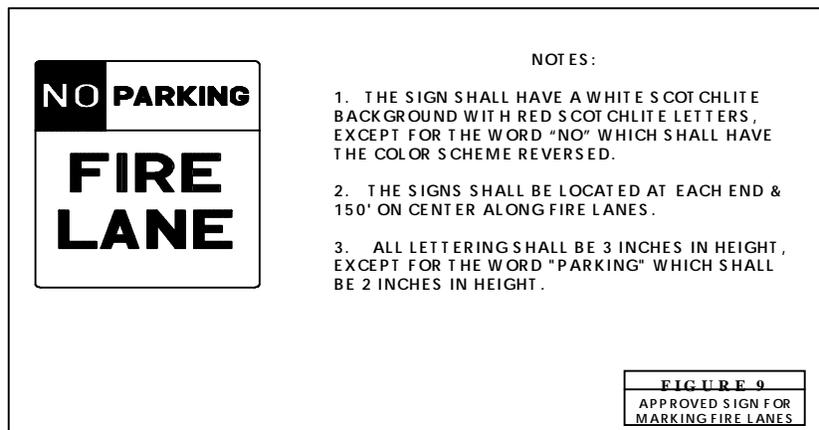


Figure Eight
Marking of Standpipe and Sprinkler Connections



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Figure Nine Approved Sign For Marking Fire Lanes



**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
COUNCIL ON REAL ESTATE APPRAISERS**

24 DE Admin Code 2930

Statutory Authority: 24 Delaware Code,
Section 2934(a) (24 Del.C. §2934(a))

ORDER

A public hearing was held to receive comments on the proposed changes to the Rules and Regulations of the Council on Real Estate Appraisers on April 15, 2003. At the meeting on April 22, 2003, the Council considered the changes published in the Register of Regulations in Vol. 6, Issue 9, March 1, 2003.

Summary Of The Evidence And Information Submitted

No written or verbal comments were received.

Findings Of Fact With Respect To The Evidence And Information

The changes proposed will clarify and enumerate the requirements for continuing education which are consistent with the requirements of the Appraiser Qualifications Board of The Appraisal Foundation.

Decision And Effective Date

The Council on Real Estate Appraisers hereby adopts the changes to Rules 2.2 and 2.3 of the Rules and Regulations as proposed to be effective 10 days following final publication in the Register of Regulations

Text And Citation

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 6, Issue 9, March 1, 2003.

COUNCIL ON REAL ESTATE APPRAISERS

Lynn Perrine-Manus, Vice Chairperson
Charles Witt
J. Frank Perdue, Jr.
Bangalore Lakshman
Charlotte Dixon
Douglas Moore

Dated: April 22, 2003

***Please note that no changes were made to the regulation as originally proposed and published in the March 2003 issue of the Register at page 1009 (6 DE Reg. 1009). Therefore, the final regulation is not being republished. Please refer to the March 2003 issue of the Register or contact the Division of Professional Regulation.**

DEPARTMENT OF EDUCATION

14 DE Admin. Code 401

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

**Regulatory Implementing Order
401 Major Capital Improvement Program**

**I. Summary Of The Evidence And Information
Submitted**

The Secretary intends to amend regulation 401 Major Capital Improvement Programs in order to update procedures and clarify issues concerning the school construction process. Some of the clarifications are in response to recommendations from the School Construction Committee. Item 1.2 has been added in Section 1.0 in order to allow for the consolidation of Major Capitol Improvement projects in one location. In section 3.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans and Construction Drawings, 3.6 has been added to identify some exceptions to the process. In 4.0 Certificates of Necessity, sections 4.3 through 4.6 have been added to clarify the process involved in acquiring a Certificate of Necessity.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 26, 2003, in the form hereto attached as *Exhibit A*. No comments were received.

II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to update the language and references in the regulation for the purpose of clarity.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 401 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on May 9, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 9th day of May 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

401 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects having a cost of ~~\$250,000~~ \$500,000, or more.

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

1.2 Projects may be considered together to form a single [major capital improvement project Major Capitol Improvement Project]. However, the consolidated major capital project should be a consolidation of projects at one location.

2.0 Procedures for Approval of a Site for School Construction

2.1 Local school districts shall ~~contact~~ notify the

Department of Education by letter to schedule ~~for~~ a site review when they propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

2.2 The Department of Education will forward all prospective sites to ~~the following agencies~~ the Office of State Planning for the pre-application review process. ~~for their review and comment.~~ The Department of Education will consolidate review the responses of the other agencies in order to ~~review and~~ rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

~~2.2.1 State Planning Coordination Office~~

~~2.2.2 The Budget Office~~

~~2.2.3 The Department of Natural Resources and Environmental Control~~

~~2.2.4 The Department of Agriculture~~

~~2.2.5 The Department of Transportation~~

~~2.2.6 The Local Planning Agency having jurisdiction~~

3.0 Approval of Educational Specifications, Schematic Design Plans, Preliminary Design Development Plans, and Final Construction Drawings Plan Approvals.

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the Department of Education. The Department will require a minimum of ten (10) working days for completion of the review and approval process.

3.2 All Schematic Design Plans shall be approved by the local school board and the Department of Education. ~~and these approved plans~~ Schematic Design Plans should be sent to the county or city planning office for information purposes only. The Department of Education requires one set of Schematic Design Plans.

3.3 All Preliminary Design Development Plans shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Design Development Plans.

3.4 All ~~final plans~~ Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Final Construction Drawings.

3.5 The local school district must involve the following groups in reviewing ~~these plans~~ Final Construction Drawings prior to the final approval. Copies of all local and state agency approvals shall be submitted to the Department of Education for final approval.

3.5.1 Fire Marshal to review the plans for fire

safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

3.5.6 Department of Natural Resources and Environmental Control for wastewater and erosion control.

3.6 Exemptions: Major [capital projects Capitol Projects] that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission to the Department of Education.

4.0 Certificates of Necessity

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

~~4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district. Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum and shall be issued only at the written request of the local school district. The Certificate of Necessity shall be quoted in the advertisement for the referendum.~~

4.3 Projects proposing the construction of a new building or for an addition to an existing building shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new building or for an addition to an existing building shall not be transferred between projects or to projects in a separate Certificate of Necessity.

4.4 Additions to existing buildings that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when the Certificate is issued, it shall identify each building in the program and describe the work to be done in that building including the dollar amount for that work. Funds may be transferred between projects issued under this Certificate of Necessity.

4.5 The Office of School Plant Planning will complete the final Certificates of Necessity and forward the Certificate of Necessity to the district superintendent for his/her signature.

4.6 A copy of the final Certificate of Necessity will be

returned to the district within ten working days following final approval by the Department of Education.

5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

5.1 The school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility, any major renovation, addition to an existing facility, new school or replacement school.

6.0 Purchase Orders: All purchase orders for any ~~[major capital improvement project~~ **Major Capitol Improvement Project**] shall be approved by both the Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

7.0 Change Orders

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education along with the purchase order.

7.2.1 Submission of a Change Order must include the following documents: ~~Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; ; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.~~ Completed purchase order as applicable; local board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark-up and other expenses.

8.0 ~~Transfer of Funds between Projects~~ Percentage of Funds Transferrable Between Projects within a Certificate of Necessity

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project. ~~For example, no more than \$10,000 could be transferred from a \$100,000 project to any other project.~~

8.1.2 No project may have more than 10% added to its initial funding. ~~For example, no more than \$10,000 would be transferred from all other projects to a project originally budgeted at \$100,000.~~

9.0 Educational Technology: All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, ~~in the project,~~ wiring for technology that meets the ~~Delaware Center for Educational Technology (DCET)~~ state standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Air Conditioning: All school buildings with Certificates of Necessity ~~issued after July 1, 2000~~ for new school construction and/or major renovation/rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.

11.0 Administration of the New School: The principal; or administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

12.0 Voluntary School Assessment

12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C §103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.

12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

**Regulatory Implementing Order
405 Minor Capital Improvement Programs**

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

I. Summary of the Evidence and Information Submitted

The Secretary intends to amend regulation 405 Minor Capital Improvement Programs in order to update procedures and clarify issues related to the programmed maintenance and repair of the school plant. In addition, the reference to vocational equipment has been changed to Career-Technical Program equipment to reflect the name change in regulation 535 Requirements for Career Technical Education Programs.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 26, 2002, in the form hereto attached as *Exhibit A*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to update the procedures and clarify issues related to the programmed maintenance and repair of the school plant.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code § 405 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on May 9, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 9th day of May 2003.

405 Minor Capital Improvement Programs

1.0 The Minor Capital Improvement Program is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory, or changing its composition. ~~or more frequent maintenance activities.~~ Minor ~~[capital improvement projects~~ Capitol Improvement Projects] are projects that cost less than ~~\$250,000~~ \$500,000 unless the project is for roof repair. The ~~three-year~~ program is ~~submitted~~ reviewed annually and should be comprised of work necessary for good maintenance practice.

1.1 Minor ~~[capital improvement~~ Capitol Improvement] ~~projects~~ [Project] purchase orders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)

1.2 The local school district shall send a copy of the purchase order to the Department of Education.

1.3 Use of Funds: The following areas are authorized for Minor Capital Improvement ~~Project~~ Program funds: roofs, heating systems, ventilation & air conditioning systems, plumbing & water systems, electrical systems, windows, ~~(sashes, frames),~~ doors, floors, ceilings, masonry, structural built-in equipment, ~~painting (fire suppression, and life safety)~~ painting, fire suppression systems, life safety systems, maintenance of site, ~~typewriters and office machines~~ office equipment used for instructional purposes only; and renovations/alterations/ modernizations that ~~does~~ do not require major structural changes.

1.4 Use of Funds Exclusions: Funds allocated for a specific project shall be used only for that project. Funds may not be used for ~~routine janitorial supplies, upkeep of grounds nor any movable equipment.~~ Recurring items such as ~~broken glass and torn window screens,~~ may not be ~~repaired or replaced with these funds~~ the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or side walks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted/deleted from major construction projects or floor space allocated according to formula and used otherwise.

1.5 Invoices: Invoices may be sent directly to the Division of Accounting for processing after work has been completed and accepted, except for invoices with an adjustment which must be approved by the Department of Education before transmittal to the Division of Accounting.

2.0 ~~Vocational~~ Career-Technical Program Equipment Replacement Requests

2.1 Requests for the replacement of ~~vocational~~ Career-Technical Program equipment may be made under the Minor Capital Improvement Program. Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item. Districts desiring to participate in the Career Technical Program equipment replacement program shall submit a request in writing to the Office of School Plant Planning at the time of the Minor Capital Improvement Program submission. Districts should not include Career-Vocational Program replacements with regular [major capital improvement projects Major Capital Improvement Projects].

2.2 ~~Equipment shall be defined as a movable or fixed unit, not built-in, that:~~

2.2.1 ~~retains its original shape and appearance with use.~~

2.2.2 ~~is non-expendable, i.e., is not consumed in use.~~

2.2.3 ~~represents an investment in money which makes it feasible and advisable to capitalize.~~

2.2.4 ~~does not lose its identity through incorporation into a different or more complex unit.~~

2.2 Career-Vocational Program Equipment is defined as either a movable or fixed unit but not a built-in unit. In addition, the equipment shall retain its original shape and appearance with use, be non-expendable, represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit.

2.3 ~~The equipment shall meet the following criteria to be replaced:~~

2.3.1 ~~Item is non-expendable.~~

2.3.2 ~~Item has a minimum 10-year life expectancy.~~

2.3.3 ~~Item has a unit cost of \$500 or more.~~

2.3.4 ~~Item is worn out or not repairable.~~

2.3.5 ~~Item is obsolete and five or more years old.~~

2.3.6 ~~Item was originally purchased with State, State and local, or local funds only.~~

2.2.1 In order to replace Career-Vocational Program equipment, the equipment must have a minimum 10 year life expectancy, have a unit cost of \$500 or more, be obsolete or more than five (5) years old, and be purchased with state, state and local or local funds.

2.3 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. ~~Vocational~~ Career-Technical Schools are 100% State funded.

3.0 Purchase Orders: Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three-year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. However, should funds prove insufficient after three years of appropriations, the district must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires ~~will~~ shall revert to the State. Purchase orders shall include the reference ID system, sub system, component and deficiency code from the correction on the facility assessment website database.

4.0 Cost Limitations: The maximum cost of a Minor Capital Improvement ~~[project Project]~~ is \$250,000 \$500,000 except roof repairs/replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

5.0 Temporary Employees: Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

6.0 Reporting: At the end of each fiscal year, school districts shall submit a list of completed projects accomplished under the Minor Capital Improvement Program.

Regulatory Implementing Order 831 Extended Illness

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal regulation 831 Extended Illness because the regulation is not necessary to clarify pregnancy as a temporary illness for the sake of school attendance. The issue is addressed in regulation 930 Supportive Instruction (Homebound).

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 26, 2003, in the form hereto attached as *Exhibit A*. Comments were received from the Delaware Developmental Disabilities Council, the Governor's Advisory Council for

Exceptional Citizens and the State Council for Persons with Disabilities The comments are addressed below in Section II Findings of Facts.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal this regulation because it is not necessary to clarify pregnancy as a temporary illness for the sake of school attendance. The issue is addressed in regulation 930 Supportive Instruction (Homebound).

The Supportive Instruction regulation extends to both flair-ups of chronic conditions and sudden illnesses. Post partum complications that extend beyond six weeks would either meet one of these definitions or rise to the level entitling the student to the protections of the IDEA or the Rehabilitation Act. In addition, while the definition of "supportive instruction" in Section 1.0 of the regulation does not expressly mention certain complicated pregnancies, Section 2.3 clarifies that pregnancies complicated by abnormal conditions meet the definition.

Finally, the Title IX regulation Section of 106.40 (b) (4) prohibits discrimination on the basis of pregnancy and childbirth in the provision of hospital benefits, services and plans and policies. The Office of Civil Rights has generally analyzed homebound policies under Section 105.40 (b) (1) (prohibiting pregnancy related discrimination in educational programs) and has found no Title IX violation in a program providing students six weeks of post partum supportive instruction where longer periods of homebound instruction were also available to post partum students on the same terms as provided other students. See Jefferson City (MO) Sch. Dist., IDELR 437 (August 28, 1992).

III. Decision to Repeal the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby repealed.

IV. Text and Citation

The text of the regulation repealed hereby and shall be removed from the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on May 13, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 13th day of May 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

~~831 - Extended Illness~~

~~1.0 Absences due to illness and temporary disability associated with pregnancy shall be treated as any other absence due to illness or temporary disability and shall be subject to the provisions of 14 Del.C. §2706.~~

See 1 DE Reg. 1976 (6/1/98)

Regulatory Implementing Order

1051 DIAA Senior High School Interscholastic Athletics 1052 DIAA Junior High/Middle School Interscholastic Athletics

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1051 DIAA Senior High School Interscholastic Athletics and regulation 1052 DIAA Junior High/Middle School Interscholastic Athletics. The amendments are found in sections 12.0, 14.0, 23.0, 29.0, 30.0 and 31.0 of regulation 1051 and sections 12.0, 14.0, 22.0, 28.0, 29.0 and 30.0 of regulation 1052. The changes to the Senior High School and Junior High/Middle School regulations are the same in most cases but the numbering system is not always the same.

The changes include removal of the word "rugby" from the Spring Football section 12.0, a change in the scoring procedure when an ineligible athlete is used in a game in Use of Ineligible Athlete section 14.0 and a change in the coaching out of season requirements in Sports Seasons and Practices sections 23.0 and 31.0 in 1051 and sections 22.0 and 30.0 in 1052. This change allows for coaching out of season with some constraints.

Changes also include new language on wrestling weight management in Wrestling Weight Control Code section 29.0 in 1051 and section 28.0 in 1052, and changes clarifying the oversight of athletic officials in Use of Officials section 30.1 in 1051 and section 29.1 in 1052. This change clarifies that the officiating of interscholastic contests in the state of Delaware which involve one or more member schools under the control of DIAA may include the giving of examinations, evaluation of officials, setting game fees, determining the number of officials per game and assigning officials.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 26, in the form hereto attached as *Exhibit A*.

Comments were received from Mr. Howard Smack,

President of the International Association of Approved Basketball Officials Board (IAABO) # 129, and from Mr. Joe Drejka, President of the Northern Delaware Football Officials Association (NDFOA) suggesting a change in the language of section 30.1 in regulation 1051 and 29.1 in regulation 1052 concerning DIAA's regulatory control over the evaluation of officials and the assignment of games. The DIAA Board of Directors discussed the proposed change at their May 8, 2003, meeting and decided that it is important for the DIAA Board to maintain its control over all aspects of the officiating of interscholastic contests to assure its statutory responsibility for providing fair competition between member schools. The DIAA Board voted unanimously to retain the language as originally proposed in the regulation and the Secretary of Education concurs with the decision of the DIAA Board. Therefore, no change is recommended in response to the comments received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to clarify and improve the rules that govern interscholastic athletics by removing the word "rugby" from the definition of organized football, changing the scoring procedure when an ineligible athlete is used in a game, permitting coaching out of season with some constraints, improving the weight management program in wrestling and giving DIAA oversight of the officiating of interscholastic athletics.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1051 and § 1052 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on May 15, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of May 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

1051 DIAA Senior High School Interscholastic Athletics 1052 DIAA Junior High/Middle School Interscholastic Athletics

PLEASE NOTE: DUE TO SPACE CONSTRAINTS ONLY THE AFFECTED PORTIONS OF REGULATIONS 1051 AND 1052 ARE BEING PUBLISHED. THE FULL TEXT OF THE REGULATION IS AVAILABLE FROM EITHER THE REGISTRAR OR THE DEPARTMENT OF EDUCATION.

1051 DIAA Senior High School Interscholastic Athletics

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. ~~Rugby and touch football~~ Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted—and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or

provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to 180 school days from the date the charge is substantiated.

See 3 DE Reg. 438 (9/1/99)

23.0 Sports Seasons and Practices

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited, Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state

championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 From August 2nd through June 14th a ~~A~~ certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the specified sport at any DIAA member school for up to 180 school days from the date the charge is substantiated.

23.10 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

23.10.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a

non-school affiliated organization.

23.10.2A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting. A coaching staff may have multiple two-hour sessions in any given day. Returning school team members shall not receive more than 2 hours of sports instruction per day.

23.10.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

23.10.4 Participation in the formal league/tournament or instructional camp/clinic, or the informal instruction under 23.10.2, shall be open, voluntary and equally available to all returning school team members.

See 3 DE Reg. 439 (9/1/99)

See 6 DE Reg. 284 (9/1/02)

29.0 Wrestling Weight Control Code

29.1 ~~Each year, prior to January 15, beginning November 1st and prior to January 15th a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season. The official weigh-in for a regularly scheduled dual meet or tournament would establish certification. In addition, each year beginning November 1 and prior to January 15, each wrestler is required to determine his/her lowest allowable competitive weight according to the DIAA Weight Monitoring Program [(see appendix)]. A wrestler may re-certify at a lower weight class during November 1 and prior to January 15 if his individual weight loss plan allows for it. However, once certified at a weight a wrestler may not weigh-in more than one weight class above the weight of certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After January 14 no wrestler is allowed to re-certify at a lower weight. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non~~

conference dual meet and tournament weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

See 4 DE Reg. 1951 (6/1/01)

30.0 Use of Officials and Officiating

~~30.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests.~~

30.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

30.2 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests.

~~30.1+~~ 30.2.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

~~30.2~~ 30.3 Officials shall be required each year to attend the DIAA rules interpretation clinic and pass the rules examination provided by the DIAA office for the sport(s) they officiate.

~~30.2+~~ 30.3.1 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be

placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

~~30.2-2~~ 30.3.2 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

~~30.2-3~~ 30.3.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

~~30.2-4~~ 30.3.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

~~30.2-4.1~~ 30.3.4.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

~~30.2-4.2~~ 30.3.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

~~30.2-4.3~~ 30.3.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

~~30.3~~ 30.4 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

See 4 DE Reg. 1951 (6/1/01)

See 6 DE Reg. 284 (9/1/02)

31.0 Out of Season Athletic Camp and Clinic Sponsorship

31.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp may ~~not only~~ instruct their returning athletes ~~as per 23-7~~ in accordance with 23.10.

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be

administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

See 4 DE Reg. 1951 (6/1/01)

See 6 DE Reg. 284 (9/1/02)

1052 DIAA Junior High/Middle School Interscholastic Athletics

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. ~~Rugby and touch football~~ Touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal

guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted; and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

14.2.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any

DIAA member school for up to 180 school days from the date the charge is substantiated.

See 6 DE Reg. 284 (9/1/02)

22.0 Sports Seasons and Practices

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1 and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date shall be required to forfeit the contest and be assessed a \$100.00 fine.

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 From August 2nd through June 14th, a A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/

entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any DIAA member school for up to 180 school days from the date the charge is substantiated.

22.10 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

22.10.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non-school affiliated organization.

22.10.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting. A coaching staff may have multiple two-hour sessions on any given day. Returning school team members shall not receive more than two hours of sports instruction per day.

22.10.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

22.10.4 Participation in the formal league/tournament or instructional camp/clinic, or the informal instruction under 22.10.2, shall be open, voluntary and equally available to all returning school team members.

See 4 DE Reg. 1951 (6/1/01)

See 6 DE Reg. 284 (9/1/02)

28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/ her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler

~~attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class. A wrestler may re-certify at a lower weight during the 4 weeks from the first day he/she appears at practice. However, once certified at a weight, a wrestler may not weigh-in more than one class above the weight of the certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After 4 weeks from the first practice day a wrestler may not compete in a weight class below his duly established weight class.~~

28.2 The weight classifications shall be as follows:

76 lbs.	100 lbs.	124 lbs.	148 lbs.
82 lbs.	106 lbs.	130 lbs.	155 lbs.
88 lbs.	112 lbs.	136 lbs.	165 lbs.
94 lbs.	118 lbs.	142 lbs.	250 lbs.

(minimum weight 164 lbs.)

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DIAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

See 4 DE Reg. 1951 (6/1/01)

29.0 Use of Officials and Officiating

~~29.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests.~~

29.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

29.2 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests.

~~29.1.1~~ 29.2.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use

other than approved officials must obtain permission from the Executive Director.

~~29.2~~ 29.3 Officials shall be required each year to attend the DIAA rules interpretation clinic and pass the rules examination provided by the DIAA office for the sport(s) they officiate.

~~29.2.1~~ 29.3.1 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest during that season.

~~29.2.2~~ 29.3.2 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

~~29.2.3~~ 29.3.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

~~29.2.4~~ 29.3.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

~~29.2.4.1~~ 29.3.4.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

~~29.2.4.2~~ 29.3.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

~~29.2.4.3~~ 29.3.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

~~29.3~~ 29.4 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

See 4 DE Reg. 1951 (6/1/01)

See 6 DE Reg. 284 (9/1/02)

30.0 Out of Season Athletic Camp and Clinic Sponsorship

30.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related

groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp/clinic may ~~not only~~ instruct their own athletes ~~as per 22.7 in accordance with 22.10.~~

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

30.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

See 4 DE Reg. 1951 (6/1/01)

See 6 DE Reg. 284 (9/1/02)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,
Section 122(1) & (3)d & j (16 Del.C. §122(1) &
(3)d & j)

**Adoption Of The State Of Delaware Regulations
Governing Public Pools**

Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Regulations Governing Public Pools. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 100.

On March 1, 2003 (Volume 6, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section

10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 31, 2003, or be presented at a public hearing on March 28, 2003, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings Of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the March 1, 2003, Register of Regulations, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Public Pools are adopted and shall become effective June 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, May 15, 2003

Summary Of Evidence

A public hearing was held on March 28, 2003 at 1:30 p.m., in the 3rd Floor Conference Room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Regulations Governing Public Pools. Announcements regarding the public hearing were published in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mike Joyce from the Health Systems Protection (HSP) Section of the Division of Public Health (DPH) made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Testimony was given at the public hearing and three letters were received commenting on the proposed regulations during the public comment period (March 1, 2003 through March 31, 2003). Organizations that commented on the proposed regulations included:

- American Red Cross of the Delmarva Peninsula

- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

All public comments and the DHSS (Agency) responses are as follows:

- **It was strongly recommended that certified lifeguards be required to oversee the public pool activities at any time it is in operation and open to the public, regardless of the depth of the water. Reasons offered for this position included:**

1) Aquatic injuries can happen any time or any place for a number of reasons. Because drowning and serious injuries, such as near drowning and injuries to the head, neck and back, occur, it is essential that those that oversee the activities at aquatic facilities are properly trained.

2) Lifeguards are trained to recognize situations to prevent injury. They supervise swimmers, minimize dangers, educate facility users about safety, enforce rules and regulations, and if necessary, respond to emergencies and provide emergency care.

3) The majority of spinal cord injuries occur in water that is 5 feet deep or less. A trained lifeguard needs to be available not only to respond if this type of incident occurs, but more importantly, to prevent these incidents from occurring.

4) The Consumer Product Safety Commission states that drowning happens quickly and without warning, there is not a cry for help. This emphasizes the need for trained lifeguard-professional that is trained to recognize behaviors and someone who is drowning or who needs help--to be present.

Agency Response: In accordance with 16 Del.C. Section 122(3)(d), lifeguards are not required for any pool of any motel, hotel or private campground in Delaware. All other public pools in Delaware greater than four feet in depth require a lifeguard to be on duty. Additionally, the Department is requiring any public pool that is four feet or less in depth have a trained pool attendant on duty. To address water safety concerns, in addition to CPR and first aid training, the Department amended the pool attendant training requirements in Section 26.707 of the Regulations to include certification in the American Red Cross Basic Water Rescue course within three years of the effective date of these regulations.

- **The Regulations use outdated language (e.g. handicap) in multiple sections (e.g. §§26.203, 26.317, and 26.703).**

Agency Response: Based on this comment the Regulation was updated throughout utilizing updated language.

- **Some exclusions from employment and pool use may be overbroad. Section 26.705 recites as follows:**

2.705 Employee/Bather Health - No person with evidence of a communicable or contagious disease shall be employed at a pool. No person with evidence of a communicable disease, cough, cold, open sore or bandaged wound shall be allowed to enter the pool water except where certified by a physician not to have a disease in the communicable stage.

Under this regulation, a person with AIDS could not collect trash at a pool or clean the restroom. Similarly, anyone with a cough (which could simply be asthma or allergy related) could be barred from a pool.

Agency Response: Based on this comment and after careful review of the Regulation, Section 26.705 was amended utilizing more specific language.

- **The general "handicapped access" section is ostensibly underinclusive:**

26.317 Handicapped Access - Steps, ramps, handrails, lifts, or other appurtenances designed to accommodate handicapped individuals will be approved within the limits of sound engineering practice and nationally recognized standards. Lifts shall be mounted into the pools deck and shall have a minimum deck width of four (4) feet behind the lift mount.

This section omits references to other barrier contexts, including telephones (§26.715); drinking fountains (§26.313); sanitary and bathhouse facilities (§26.312); and food and beverage facilities (§26.314). Under general principles of regulatory interpretation [inclusio unius, exclusio alterius], the omission of these contexts from the "handicapped access" section implies that accessible design is not required in them.

Agency Response: Based on this comment and after careful review of the Regulation, Section 26.317 was amended utilizing more inclusive language.

- There was concern expressed that pool attendants defined in the regulations for pools under four feet deep need some form pool safety awareness and emergency training. Standing techniques and recognizing signs of distress are two types of training that lifeguards receive that would be beneficial to pool attendants.

Agency Response: Based on this comment and after consulting with the American Red Cross, training requirements for pool attendants in Section 26.707 were amended to require pool attendants to be certified in American Red Cross Basic Water Rescue within three years of the effective date of these Regulations.

The public comment period was open from March 1, 2003 to March 31, 2003.

Verifying documents are attached to the Hearing Officer's record. The Regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**State Of Delaware
Regulations
Governing Public Pools**

ADOPTED May 22, 1958, Amended May 26, 1960,
June 21, 1962, February 15, 1983, April 15, 1990,
April 15, 1993

BY THE DELAWARE STATE BOARD OF HEALTH
and

Amended April 22, 1997 and BY THE SECRETARY
DELAWARE HEALTH AND SOCIAL SERVICES
Under Authority Of 16 Delaware Code Section 122(1) And
(3)(D) And (J).

SECTION 26.1 DEFINITIONS

26.101 "**Approved**" means acceptable to the Division, unless stated otherwise, based on its determination as to conformance with appropriate standards and good public health practices.

26.102 "**Approved Pool Operator**" means a person who is at least eighteen (18) years of age and has successfully completed a pool operator-training course that is approved by the Division.

26.103 "**Attendant**" means a person who meets the training requirements of the Division specified in Section 26.707.

26.104 "**Attendant on Duty**" means an attendant who is either at poolside or in the pool (special situations), visually guarding the life of the bathers. An attendant on duty shall not be assigned other duties that will distract his/her attention from proper observation of the bathers, or prevent the rendering of immediate assistance to someone in

distress. All attendants on duty should be identified by emblems or distinguishing apparel. In facilities with a spa pool(s) (SpP) only it means an attendant who is on the premises and can be easily located and summoned to render assistance to someone in distress. If the attendant is not in direct view of the spa pool when it is open, he/she shall be located such that the poolside alarm required by Section 26.719 can be easily heard.

26.105 "**Beneficial Owner**" means an ownership interest in the entity owning the pool through direct ownership of the real property where the pool is located, direct ownership of stock in a stock corporation owning the real property where the stock represents an equity interest in the corporation, or direct ownership through being a member in a limited liability company (L.L.C.) or a partner in a partnership owning the real property upon which the pool is placed.

26.106 "**Competitive Diving**" means either the training of divers or an actual diving competition among trained divers, which is sanctioned by the Federation Internationale de Natation Amateur (FINA), the National Collegiate Athletic Association (NCAA), the National Federation of State High School Associations (NFSHSA) or United States Diving Inc. (USD). The institution which is sponsoring the diving training or diving competition shall be responsible for the hiring of a qualified person(s) who is competent and knowledgeable in the areas of diving mechanics and safety. This person(s) shall be present at every practice session and competition in order to ensure proper training, supervision and safety.

26.107 "**Cyanuric Acid**" means a chemical added to pool water intended to counter-act degradation of the chlorine residual by ultraviolet light.

26.108 "**Director**" means the Director of the Division of Public Health or an authorized agent.

26.109 "**Diving**" means a head first entry into a body of water.

26.110 "~~**Diving Board Water Entry Area**~~" ~~means a water surface area of three hundred twenty (320), three hundred sixty (360) or four hundred (400) square feet (see Section 26.320) immediately in front of a diving board.~~

26.110 "**Division**" means the Division of Public Health of the Department of Health and Social Services, or anyone authorized by the Division as its designated representative, in conformance with ~~the~~ 29 Delaware Code, Section 7904.

26.111 "**Fence**" means a continuous vertical barrier, either solid, or with openings, holes or gaps not exceeding four (4) inches in diameter or width, completely enclosing the pool area which will prevent the entry of small children and minimize the entry of unauthorized or unwary persons. ~~Chain link may be used provided that the openings are not greater than 2 and 3/8 inches measured horizontally.~~

26.112 "**Fixture Set**" means one (1) lavatory, two (2)

water closets* and one (1) shower for each sex. *In the male facilities, up to fifty (50) percent may be substituted with urinals, and if more than one (1) fixture set is required based on water surface area, this is reduced to one (1) water closet (male and female) for the subsequent fixture sets.

26.113 **"Flume"** means an inclined channel or tube which may receive a constant supply of flowing water and which is designed to provide a safe transit path for conveying sliders to a run-out slide, a splash pool or a designated area of a swimming pool (SwP) of a water slide flume.

26.114 **"Halogen"** means one of the chemical elements chlorine, bromine, or iodine.

26.115 **"Inactive Pool"** means a pool, which has been closed, for twelve (12) or more continuous months.

26.116 **"Lifeguard"** means a person who meets the training requirements of the Division specified in Section 26.706.

26.117 **"Lifeguard on Duty"** means a lifeguard who is either at poolside or in the pool (special situations), visually guarding the life of the bathers. A lifeguard on duty shall not be assigned other duties that will distract his/her attention from proper observation of the bathers, or prevent the rendering of immediate assistance to someone in distress. ~~All lifeguards on duty should be identified by emblems or distinguishing apparel.~~

~~26.118 **"Maximum Bathing Load"** means the maximum number of persons allowed in a pool at the same time~~

26.118 **"NTU"** means Nephelometric Turbidity Unit, which is a means of measuring the water turbidity.

26.119 **"ORP"** means oxidation-reduction potential, which is an electrical measurement in millivolts (mV) of the strength of the disinfectant (oxidizer). A higher ORP means a higher disinfecting potential. ~~Pools should maintain a minimum ORP of 650 mV.~~

26.120 **"Person"** means any corporation, company, association, firm, partnership, society, joint stock company or individual.

26.121 **"Person In Charge"** means the/an owner of the pool. This individual shall represent the pool at any hearing scheduled pursuant to Section 26.12. Every pool shall, upon request, provide the Division with the name of the person(s) in charge and how they can be contacted. An operator, hired by the/an owner, cannot be the person in charge.

26.122 **"Private Pool"** means any indoor or outdoor artificial basin containing a body of water which is used for swimming, wading, diving, recreative bathing, or other aquatic purposes and is not open to the general public, or a limited section of the public, but is intended strictly for the use of the beneficial owner(s) and his/her/their family and/or their guests in either of the following situations:

- a. Individual beneficial owner or

- b. Multiple beneficial owners where all of the following can be demonstrated to the Division:

1. The pool is owned by a legal entity which is in turn owned by the beneficial owners.
2. Pool ownership is part of the ownership of real property by the beneficial owners.
3. The beneficial owners are able to assert ultimate dominion and control over access to and maintenance of the pool.
4. No pool memberships are available to non-beneficial owners.

If it can be demonstrated that a pool meets all of the above criteria and if the owners want the pool to be approved as private, they shall contact the Division for the required procedure. Any multiple beneficial ownership pool that is approved private shall remain so until the owners notify the Division that the pool no longer meets all of the above criteria. These Regulations shall not apply to private pools. ~~Multiple ownership private pools, however, should go through the plan review/approval process outlined in Section 26.202 so the pool will be in compliance with the design and construction requirements of these Regulations in the event that, at some future time, the pool no longer meets all of the criteria for remaining private.~~

26.123 **"Public Pool"** means any indoor or outdoor artificial basin constructed of concrete, metal, fiberglass or any other nontoxic, impervious, and structurally rigid approved materials, which contains a body of continuously recirculated and filtered water with automatic disinfection which is used for swimming, wading, diving, recreative bathing, or other aquatic purposes and is open to either the general public, or a limited section of the public, with or without a fee. These Regulations shall not apply to pools that are used by one (1) patron at a time and whose water is completely changed after each patron. A public pool may hereafter be referred to as a pool, a swimming pool, a wading pool, a spa pool, a water slide, or a special purpose pool in these Regulations. Based on the design, size, usage, or other factors, public pools shall be categorized as follows:

"SwP" means a swimming pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

"WP" means a wading pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

"SpP" means a spa pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

"WSF" means a water slide flume which is open to either the general public, or a limited section of the general public based on residency, membership, or some other

specific criteria.

"SpPP" means a special purpose pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

26.124 "*Run-Out Slide*" means a flume where the bathers stop in the flume and then exit to the pool deck/walkway.

26.125 "*Sanitary Survey*" means a comprehensive on-site review of the facilities, operation and management of a pool for the purpose of determining whether a safe environment and bathing water of acceptable quality are being provided.

26.126 "*Secretary, Delaware Health and Social Services*" means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as the Secretary, DHSS in conformance with 29 Delaware Code Section 7904.

26.127 "*Slip Resistant*" means a textured surface that is neither conducive to slipping when wet nor abrasive to bare feet and has a minimum static coefficient of friction of 0.6 (measured by an approved method).

26.128 "*Spa Pool*" means a pool containing water greater than ninety five (95) degrees Fahrenheit (°F) which is not emptied after each use, ~~which~~ has a maximum depth of four (4) feet, ~~a maximum water surface area of two hundred fifty (250) square feet,~~ is large enough for the immersion of at least one person, and may have a high velocity air and/or water jet system.

26.129 "*Special Purpose Pool*" means a pool which is used for a specific supervised purpose, and which does not fall into any of the first four (4) categories listed in Section 26.124 (SwP, WP, SpP or WSF).

26.130 "*Splash Pool*" means the body of water located at the end of a flume from which bathers exit to the deck.

26.131 "*Superchlorinate*" means the addition to the pool water of an amount of chlorine sufficient to produce a free chlorine residual which is at least ten (10) times the amount of the combined chlorine residual plus the required minimum free chlorine residual, in order to oxidize any ammonia or other nitrogenous materials which may be present in the pool water.

26.132 "*Swimming Pool Slide*" means a commercially manufactured water entry device consisting of an inclined plane (either straight or curved) with a small raised edge (a few inches like a playground slide) which may receive a ~~constant~~ supply of flowing water, is securely attached to the pool deck and is designed to provide a safe transit path for conveying sliders to a pool (water slide flumes are not included in this definition).

~~26.135 "*Swimming Pool Slide Water Entry Area*" means a water surface area of two hundred fifty six (256)~~

~~square feet (16'x 16') immediately in front of a swimming pool slide.~~

26.133 "*Turbidity*" means a measure of the clarity or cloudiness of water.

26.134 "*Turnover*" means the circulation, through the recirculation system, of a quantity of water equal to the pool volume.

26.135 "*Wading Pool*" means a familiarization pool for small children that may range in water depth from zero (0) to a maximum of two (2) feet, with a maximum wall height (distance from rim to bottom) of nine (9) inches at the pool edge and a maximum depth of eighteen (18) inches.

26.136 "*Water Slide Flume*" means a water entry device consisting of one or more flumes that discharge into a ~~with a~~ run-out slide, a splash pool or a designated area of a swimming pool (SwP) (swimming pool slides are not included in this definition).

26.137 "*Wet Deck/Walkway Area*" means any deck/walkway area that may become wet from splash or from bather traffic, the pump/filter room floor and the floors of all sanitary and bathhouse facilities.

SECTION 26.2 GENERAL PROVISIONS

26.201 *Scope and Purpose* - The provisions of these Regulations shall apply to all public pools in the State of Delaware. The purpose of these Regulations is to provide minimum standards for design, construction, maintenance and operation of public pools in the State of Delaware, and to assure a clean, healthful, and safe environment for all bathers using these pools. These Regulations in no way preclude a facility from establishing additional rules and operating procedures as long as they do not contradict those established herein.

26.202 *Plans and Specifications* - No person shall construct, install, alter or replace a pool, auxiliary pool structure, or pool equipment, and no person shall convert a private pool to a public pool until three (3) copies of plans and specifications have been submitted to the Division, and a Certificate of Approval has been issued. Whenever it is discovered that any of the above have occurred or are occurring without such approval, the Director shall order the owner, operator or contractor to immediately close the pool if it is open or stop the work or conversion, and to submit plans and specifications to the Division. Any part of the unapproved work or pool that is not in compliance with these Regulations shall be removed, replaced or reconstructed in order to achieve compliance. Plans and specifications shall be legible and on paper no larger than 30" x 42" and shall include, but are not limited to the following information:

- a. The facility name and the name and telephone number of a contact person at or near the site.
- b. The name, mailing address and telephone number of the owner.
- c. The name, mailing address and telephone

number of the builder/contractor/engineer.

d. A map of the area (city, town, rural area, etc.) showing the project location and a scaled drawing of the site showing the pool location.

e. A scaled drawing showing an overhead view of the pool which includes the location of but is not limited to: all recirculation system fittings and piping, depth markings, steps/ladders, diving board, lifeguard stand, fillspout, safety line/bottom marking, lights (underwater and overhead), deck/walkway, fence, pump/filter room*, bathhouse facilities, food/beverage service facilities and any other pools (e.g. wading pool, spa pool). This drawing shall also specify the materials of construction for the pool and deck, and the color of the pool walls and floor. If wood is planned for the wet deck/walkway area the manufacturer of the wood shall be specified, and if the wood has been treated by the manufacturer or will be treated by the installer, any preservatives, coatings, paints, etc. shall be specified.

*Either on this drawing on a separate sheet, a blown up scaled drawing of the pump/filter room showing all piping, equipment, fittings, and the flow pattern shall be provided.

f. A scaled drawing showing a profile view(s) of the pool, the pool depths and the relative elevation of the pump and filter. If a diving board is planned, an end view showing the required dimensions shall also be provided.

g. The following pool information: volume, water surface area, perimeter filter type, filter surface area, design flow rate, recirculation pump capacity, total dynamic head (TDH) in feet (if not provided a minimum of sixty (60) TDH will be used), pool turnover time, and the size and type of all piping (i.e., ductile iron, copper, plastic).

h. Specifications for and drawings or pictures of all recirculation system components, including but not limited to: skimmers* or gutters; drains, inlets; recirculation pump with pump curve; rate of flow indicator with manufacturer's installation instructions; the type, brand and surface area in square feet of the filter(s)*; multiport valve*; the type, brand and capacity of automatic disinfection equipment*; heater (including proof of AGA or UL approval); portable vacuum equipment; and the chemical name of the disinfectant to be used. All specifications shall include the manufacturer's name and model #.

*Specifications shall include proof of NSF International listing, or approved equivalent. In the remainder of these Regulations, wherever there is a referral to NSF, it means NSF International or approved equivalent.

i. The source of potable water (i.e. their own on-site well or the name of the water supplier if the water comes from off-site), and the location and methods of disposal for sanitary waste, filter backwash water and pool water pumped to waste.

j. For new pools, the following signed statement from the owner ~~in all three (3) sets of plans and~~

~~specifications:~~ "I hereby acknowledge that all items either listed or shown in these plans and specifications as not in contract (NIC), by others, or equivalent, are my responsibility. I also realize that this entire project must be completed in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval, prior to the issuance of an operating permit by the Division." This statement with signature may appear directly on the plan drawings.

k. For changes to existing pools, the following signed statement from the owner ~~in all three (3) sets of plans and specifications:~~ "I hereby acknowledge that all items either listed or shown in these plans and specifications as not in contract (NIC), by others, or equivalent, are my responsibility. I also realize that this entire project must be completed in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval, prior to this pool receiving permission from the Division to reopen." This statement with signature may appear directly on the plan drawings.

Upon receipt of plans and specifications, the Division shall determine if the project is approved or disapproved and notify the responsible person within thirty (30) days. If disapproved, the reasons shall be specified. If approved, a Certificate of Approval shall be issued which shall be valid for one (1) year. All construction shall be in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval. Prior to opening, the owner or operator of a new pool shall contact the Division for a pre-opening sanitary survey in order to receive an operating permit. The Division reserves the right to reject plans and specifications from a pool builder/pool service company based upon evidence of malfeasance or non-feasance related to a previous Certificate of Approval.

~~The Division may establish a fee for plan review/approval. Public notice and opportunity for a public hearing will be provided prior to the implementation of such a fee.~~

26.203 *Site Inspection* - Prior to the issuance of a Certificate of Approval for the construction of a new outdoor pool, a site inspection shall be made by a representative of the Division in order to confirm that the pool location meets the requirements of Section 26.301. After a specific site is approved, any change of location shall require another site inspection.

26.204 *Operating Permit* - No person shall operate a pool without a valid permit from the Division and operating permits shall expire annually. The operating permit is not transferable if either the pool name or ownership changes. ~~For new pools, the operating permit application should be submitted at least thirty (30) days prior to the planned opening date.~~ The operating permit shall be available for viewing by any patron or representative of the Division upon request ~~and should be conspicuously posted.~~ ~~The Division may establish an annual fee for the operating permit. Public~~

notice and opportunity for a public hearing will be provided prior to the implementation of such a fee.

~~26.205 *Pool Builder/Pool Service Company* - No person or company shall install, construct or sell a public pool that does not conform to these Regulations. All pools should be built/serviced by a qualified person or company. The Division may establish certification and licensing requirements for pool builders/service companies along with a fee for such license. At such time, the Division shall require that all pools be built/serviced by a certified and licensed person. Public notice and opportunity for a public hearing will be provided prior to the implementation of certification and licensing requirements and/or a license fee. This section is in no way meant to preclude the owner of a pool or the owner's employees from performing work on their own pool.~~

26.205 *Pool Operator* - The operation of every pool shall be monitored by an approved pool operator. This person may be part of the pool staff or from a private company and shall monitor the pool as often as necessary to maintain compliance with these Regulations. The approved pool operator's certificate issued by the Division, or a copy, shall be available for viewing by any patron or representative of the Division upon request and should be conspicuously posted. The Division reserves the right to revoke the approval of any operator based upon evidence of malfeasance or non-feasance.

26.206 *Right of Entry and Sanitary Surveys* - Representatives of the Division shall have the right of immediate entry any time a pool is open, and in special situations, at any reasonable time, in order to perform a sanitary survey to determine compliance with these Regulations. A sanitary survey shall be conducted at least once per year at every active pool. These surveys may include any room or area associated with the pool operation. In addition, the representatives shall be permitted to examine any pertinent records.

26.207 *Inactive Pools* - ~~Any pool which closes for thirty (30) continuous days or more, should contact the Division for a sanitary survey prior to re-opening.~~ Any pool which closes for twelve (12) or more continuous months shall: be classified as inactive; contact the Division for a sanitary survey prior to re-opening; and make whatever changes are deemed necessary to achieve compliance with the current Regulations. If the inactive pool does not have its own recirculation/filtration/disinfection system, this shall be provided prior to receiving approval to reopen. If there is no intention of reopening an inactive pool, it ~~should~~ shall be properly abandoned (removed or filled with dirt to ground level). Outdoor inactive pools shall be equipped with a tightly fitting cover during mosquito breeding season (normally May through September).

26.208 *Variance Standards* - The Division may allow for some deviation from these Regulations on a temporary

trial basis, in order to allow the pool owner or operator to demonstrate that some alternate procedure or innovation in design, construction or operation should be approved. Such permission shall only be granted if the Division is convinced that the health, safety and well-being of the pool patrons will not be jeopardized. If the procedure or innovation in design, construction or operation is approved, the Regulations shall be amended accordingly, if necessary.

SECTION 26.3 LOCATION, DESIGN AND CONSTRUCTION

26.301 *Location* - Pools shall not be located in areas which are subject to contamination from dust, soot, flyash, smoke, improper drainage, a high water table, or other undesirable substances. For outdoor pools, any overhead wiring not inside an electrical conduit shall not pass over any part of the deck or an area within twenty (20) feet of the nearest edge of the pool. If the edge of a pool, extended upward vertically, is located within fifteen (15) feet of a building, roof or balcony, a protective barrier may be required (discretion of the Division) to prevent diving from the building, roof or balcony.

26.302 *Design* - No limits are specified for the shape of pools, however, consideration shall be given to shape from the standpoint of safety and proper water circulation. Pools shall be designed such that: there is even and complete water circulation throughout; safe, sanitary conditions can be maintained at all times; and all bathers can be effectively monitored; ~~and all bather entry points to the pool deck are at the shallow end of the pool if any part of the pool is greater than five (5) feet deep. When the bather entrance gate cannot be located at the shallow end, an interior fence at least four (4) feet high shall be provided, which will create a corridor to the shallow end.~~ There shall be no protrusions, extensions, means of entanglement, or other obstructions in the pool which can cause entrapment or injury. Underwater or overhead projections or obstructions except for handholds, steps, ladders, ~~handicapped access~~ facilities **[for persons with disabilities]** or recirculation system fittings shall be prohibited, unless such construction can be justified by engineering design. Underwater seat benches may be permitted in areas where the water depth is five (5) feet or less provided that: the maximum water depth over the seat bench is twenty-four (24) inches; the seat bench is completely recessed; the outer edge of the seat bench shall be outlined in contrasting color by a solid marking line at least one (1) inch wide; and the seat bench surface is slip resistant.

26.303 *Construction* - Pool walls and bottoms shall be constructed of concrete, fiberglass, metal or other nontoxic, impervious and structurally rigid materials approved by the Division, which will provide a watertight basin, smooth, easily cleanable surfaces and a finish without cracks. Sand, earth or wood construction shall be prohibited. The walls

and bottom shall be white or light in color for the purpose of insuring contrast to identify objects. Corners formed by the intersections of walls or walls and floors shall be curved (radiused). Surfaces within the pool intended to provide footing for patrons shall be designed to be slip resistant. Offset or safety ledges shall be prohibited.

~~26.304 *Hydrostatic Relief Valve* - All below ground pools, with the exception of indoor crib bed pools, should have a hydrostatic relief valve, which will relieve ground water pressure and prevent the shell from being lifted upward.~~

26.304 *Walls* - All SwP and WSF splash pool walls shall be vertical for a minimum depth of two (2) feet six (6) inches in areas less than five (5) feet deep. Exceptions may be made for irregularly shaped pools (e.g. zero depth entry, T, L or Z shapes) in the recessed areas out of the main swimming area.

26.305 *Floor/Slope* - All pool floors shall be sloped toward the outlet/drain and all slopes shall be constant. The slope shall not exceed one (1) foot in twelve (12) feet (1':12') where the water depth is five (5) feet or less, shall not exceed one (1) foot in (3) feet (1':3') where the depth is greater than five (5) feet. Any pool having a transition from the slope in the shallow end to the deep end shall do so through a slope break starting at a depth not less than three and one half feet (3-1/2) feet and not greater than five (5) feet. At least one (1) foot and not more than two (2) feet on the shallow side of the slope break directly under the safety line, the floor shall be marked with a line of contrasting color that is either: solid and at least two (2) inches wide or intermittent with sections that are at least four (4) inches by four (4) inches and not more than one (1) foot apart on centers.

26.306 *Shallow End Minimum/Maximum Depth* - With the exception of diving pools, all SwP pools shall have a minimum depth in the shallow area of three (3) feet and a maximum depth of four (4) feet. Exceptions may be made for irregularly shaped SwP pools (e.g. zero depth entry, T, L or Z shapes) with recessed areas out of the main swimming area.

26.307 *Ladders and Steps* - With the exception of WP, SpP and WSF splash pools, all pools shall have at least two entry/exit points (ladders or steps), one (1) for each end. Any pool with water deeper than five (5) feet shall have at least two (2) ladders in the deep end. In addition to the above, any pool with a perimeter greater than two hundred twenty-five (225) feet shall have one (1) additional ladder or set of steps for each additional seventy-five (75) feet of perimeter or fraction thereof.

Ladders shall be constructed of corrosion resistant materials and shall be securely anchored into the pool deck or built into the pool wall. All ladders shall have two (2) handrails and at least two (2) slip resistant treads which are at least one and one half (1-1/2) inches deep, with a uniform length of at least twelve (12) inches and a uniform spacing of

at least seven (7) inches and not more than twelve inches. The clearance between any ladder and the pool wall shall be at least three (3) inches and not more than six (6) inches. Recessed ladders (built into the wall) shall have two (2) handrails and shall have a tread at least five (5) inches in depth, at least twelve (12) inches in width and the uppermost tread shall be within twelve inches of the pool coping top edge or the deck surface. All treads shall slope toward the pool.

Where steps are provided, they shall either be recessed or located in a corner. All steps shall have a minimum tread length of twenty-four (24) inches, a tread depth of at least ten (10) inches and a uniform height of not more than twelve (12) inches, with the exception of either the top or bottom tread which may vary +/- two (2) inches. The top surface edge of each step shall be outlined in contrasting color by a line (painted, tile, etc.) at least one (1) inch wide. Each set of steps shall have at least one (1) handrail per seven (7) feet of tread length. If the steps are less than four (4) feet wide the handrail shall be located at the side and if the steps are four (4) feet or wider, the handrail shall be located in the center. The tread surface shall be slip resistant.

26.308 *Decks and Walkways* - Every pool shall have a continuous unobstructed deck at rim level around the entire perimeter. The deck shall be no less than four (4) feet wide at any point, measured from the pool edge. For outdoor pools, the area of the deck shall be at least equal to the area of the pool water surface, and for indoor pools, the area of the deck shall be at least equal to two thirds (2/3) of the pool water surface. A minimum width of four (4) feet shall be provided behind lifeguard stands and the ladders/steps of all diving boards. Walkways shall be provided from the deck to all pool sanitary and bathhouse facilities. In computing the minimum deck area for adjacent pools, no area of the deck shall be considered as serving both pools.

In order to prevent standing water, decks and walkways shall have a uniform slope of not less than one quarter (1/4) inch per foot and not more than one half (1/2) inch per foot, away from the pool and toward deck drains or areas where the water will have a free unobstructed flow to points of disposal. The edge of the pool deck at its junction with the pool wall shall be constructed of bullnose coping, or some other acceptable material, which will provide an adequate hand hold around the entire pool perimeter and which is not more than twelve (12) inches above the normal water level.

Wet deck/walkway areas shall be constructed of concrete or other approved material which has an impervious slip resistant surface, can be easily cleaned and is installed such that there are no hazards to patrons or their bare feet (e.g. tripping, abrasions, splinters, etc.). If expansion joints are provided, the joint shall be filled with a non-rigid material such as mastic which shall not protrude above the

deck. ~~Exposed wooden expansion joints shall be prohibited. Carpeting shall be prohibited in wet deck/walkway areas. Wood may be used in wet deck/walkway areas if all of the following conditions are met (the following conditions apply only to the wood that forms the wet deck/walkway surface and not to support structures below):~~

~~a. The wood shall not be treated with creosote, pentachlorophenol, inorganic arsenicals or any other substance which has been shown to have either an acute or a chronic health effect. Any substance that has been applied to the wood by the manufacturer and any substance that will be applied to the wood by the installer shall be approved prior to installation.~~

~~b. Spacing between boards not to exceed one quarter (1/4) inch shall be provided.~~

~~c. The area below the wooden deck or walkway shall properly drain to points of disposal.~~

~~d. All wood fasteners shall be corrosion resistant.~~

26.309 *Electrical and Lighting Requirements* - All electrical wiring and equipment associated with the pool shall be in compliance with all appropriate state and local codes and the current edition of the National Electric Code. For indoor pools and all bathhouse facilities, all overhead wiring which is not behind the wall or ceiling shall be inside an electrical conduit.

Artificial lighting shall be provided at all pools which do not have adequate natural lighting or which are to be used for evening/night swimming. The artificial lighting shall meet all of the following conditions:

a. Lighting shall be sufficient such that all areas of the pool, and either of the following are clearly visible without glare from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field and placed on the bottom of the deepest point.

b. Outdoor pools shall provide at least thirty (30) footcandles and indoor pools shall provide at least fifty (50) footcandles of illumination at the water surface from natural and/or artificial lighting.

c. All overhead lights shall be covered with adequate shatter resistant shields and equipped with shatter resistant bulbs.

26.310 *Hose Bibbs* - A sufficient number of hose bibbs shall be provided and located such that all parts of the deck area, the pump/filter room and the bathhouse facilities are easily reachable with a fifty (50) foot hose, without the hose passing over or through the pool water. Hose bibbs shall be located at the edge of the deck such that they do not constitute a tripping hazard and shall be equipped with vacuum breakers or other approved backflow prevention devices.

26.311 *Trees, Sand Areas and Planted Areas* - Trees at the pool site prior to construction shall not be permitted inside the pool fence ~~and should be removed if they will be~~

~~within fifty (50) feet of the pool edge.~~ Sand areas and other nongrass/unsodded areas designed for bather access shall not be permitted inside the pool fence or room. Provisions shall be made so that bathers returning to the pool deck from these areas are routed past a foot rinse shower. Flower beds, shrubs and other similar planted areas may be permitted inside the pool fence or room if all of the following conditions are satisfied:

a. There shall be a separation distance of at least ten (10) feet between the edge of the pool and the edge of the planted area.

b. The planted area shall be designed such that regular maintenance can be easily accomplished.

c. All planted area drainage shall be conducted away from the pool in a manner that will not create muddy, hazardous, or objectionable conditions.

d. The planted area shall be designed to discourage patron entry.

26.312 *Sanitary/Bathhouse Facilities* - All pools shall have at least one (1) permanent water closet with lavatory for the lifeguard/attendant, which is accessible when the pool is open and is located contiguous to the pool deck or pool room. Furthermore, all pools, with the exception of those where all patrons' sanitary/bathhouse facilities are within one thousand (1000) feet, shall provide the following permanent sanitary/bathhouse facilities located contiguous to the pool deck or pool room:

Number of Fixture Sets For Each Sex	*Pool(s) Water Surface Area (Square Feet)
One (1)	Up to 2000
Two (2)	2001 to 4000
Three (3)	4001 to 6000
Four (4)	6001 to 8000

*For pools greater than eight thousand (8000) square feet, one additional fixture set for each sex shall be provided for each additional four thousand (4000) square feet, or fraction thereof.

All sanitary and bathhouse facilities shall be indoors, enclosed to provide privacy, finished in light colors, well ventilated, in good working order and designed such that good sanitation can be maintained throughout at all times. Floors shall be constructed of concrete or other approved material, shall have a smooth slip resistant finish and shall be sloped to floor drains or points of drainage. Carpeting shall be prohibited in all wet deck/walkway areas. Floor and wall junctions shall be curved (radiused) for easy cleaning. Lighting shall provide at least thirty (30) footcandles of illumination at floor level. All lavatories and showers shall have hot and cold water and shall be equipped with tempering valves which provide water at a temperature not exceeding 120°F. All bathhouses shall have soap (liquid

recommended), single service towels or hot air dryers, toilet tissue, and waste baskets. All plumbing shall be in compliance with the "State of Delaware Regulations Governing a Detailed Plumbing Code" and new installations shall be inspected and approved by the appropriate authority prior to use. ~~Floors shall have a slip resistant finish, and carpeting and duckboard shall be prohibited.~~ All bathhouse facilities shall be at the same elevation as the pool deck or at an elevation that is accessible with a ramp having a slope that shall not exceed one (1) inch per foot and should not exceed one (1) inch per twenty (20) inches. ~~The pool operator should require all bathers to take a shower prior to entering the pool.~~

All outdoor pools, except those where bathers must go through the bathhouse in order to reach the deck, shall have a foot rinse shower at each patron entry point. Any indoor pool with direct bather access to an outdoor sand beach or other unsodded area shall also have a foot rinse shower at the access point. The foot rinse shower shall be located such that bathers must walk past the deck discharge area. In order to prevent standing water, the deck discharge area shall slope toward a drain or an area where the water will have a free unobstructed flow to points of disposal. The foot rinse shower shall ~~should~~ be a shower head; be approximately twelve (12) to twenty-four (24) inches above the deck; have an automatic shut off valve when released; and point toward the deck at approximately a forty-five (45) degree angle. Foot baths (standing water in which patrons rinse their feet) shall be prohibited.

26.313 *Drinking Fountain* - At least one (1) sanitary type (guarded angle jet) drinking fountain in good working order shall be provided. The fountain shall be easily accessible and located inside the pool fence or room ~~at the shallow end.~~ Common drinking cups shall be prohibited.

26.314 *Food and Beverage Facilities* - Food and beverage service facilities that are inside the pool fence or room shall not be located within twenty (20) feet of the pool edge. If licensing is required, all such facilities shall be licensed by the Division or the appropriate authority.

26.315 *Starting Blocks* - If starting blocks for competitive swimming events are installed, the water depth under the blocks shall be greater than five (5) feet.

26.316 *Escutcheon Plates* - All anchor bolts shall be covered by escutcheon plates.

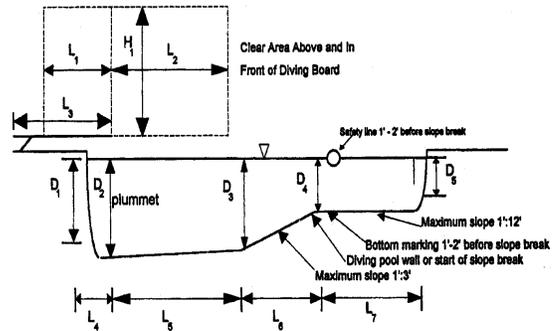
26.317 ~~[Handicapped]~~ *Access [for Persons with Disabilities]* - ~~[Steps, ramps, handrails, lifts, or other appurtenances]~~ *[Facilities]* designed to accommodate ~~[persons with disabilities]~~ ~~handicapped individuals~~ will be approved within the limits of sound engineering practice and nationally recognized standards. Lifts shall be mounted into the pool deck and shall have a minimum deck width of four (4) feet behind the lift mount.

26.318 *Swimming Pool Slides* - The installation of swimming pool slides shall be prohibited. ~~All swimming~~

pool slides that are in existence on the effective date of these Regulations (April 15, 1990) should be removed.

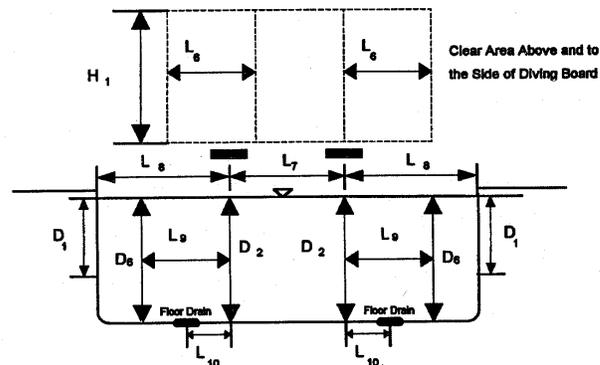
26.319 *Diving Area/Diving Pool and Diving Board* - The dimensions of the diving area/diving pool and the diving board shall be in accordance with the following:

DIVING POOL/AREA (Side View)



Minimum (*) and Maximum (**) Dimensions for Pools with Diving Boards

DIVING POOL/AREA (End View at Plummet)



DIVING BOARD HEIGHT ABOVE-WATER	HEIGHT		LENGTHS							DEPTHS				
	H ₁	L ₁	L ₂	L ₃	L ₄	L ₅	L ₆	L ₇	D ₁	D ₂	D ₃	D ₄	D ₅	
MAXIMUM 1/2 METER (20 INCHES)	* 15'	* 8'	* 15'	**12' 10'	*3' **4'	*16'	*13'6"	* 12'	*	* 6'4"	* 10'	* 9'6"	* 3'6" **5'	* 2'6" ** 3'6"
>1/2 METER TO 1 METER (SEE L ₃)	* 15'	* 8'	* 16'	** 12'	*3' **4'	* 18' 16'6"	* 16'6"	* 12'	*	* 6'6"	* 11'	* 10'6"	* 3'6" **5'	* 2'6" ** 3'6"
>1/2 METER TO 1 METER (SEE L ₃)	* 16'	* 8'	* 16'	** 16'	*5' **6'	* 20' 16'6"	* 19'6"	* 12'	*	* 7' 6'	* 12' 11'	* 11'6" 10'6"	* 3'6" **5'	* 2'6" ** 3'6"
>1 METER TO 3 METERS	* 16'	* 8'	* 16'	** 16'	*5' **6'	* 20'	* 22'6"	* 12'	*	* 7'6" 6'	8 12'	* 12'6" 11'6"	* 3'6" **5'	* 2'6" ** 3'6"

>greater than

Diving Boards

Minimum (*) and Maximum (**) Dimensions for Pools with

DIVING BOARD HEIGHT ABOVE-WATER	HEIGHT	LENGTHS					DEPTHS		
	H ₁	L ₆	L ₇	L ₈	L ₉	L ₁₀	D ₁	D ₂	D ₆
MAXIMUM 1/2 METER (20 INCHES)	* 15'	* 8'	* 10' 7"	* 12' 8' 6"	* 10' 7"	* 5'	* 6'	* 10'	* 10' 9"
>1/2 METER TO 1 METER (SEE L ₃)	* 15'	* 8'	* 10' 7"	* 12' 8' 6"	* 10' 7"	* 5'	* 6'6"	* 11'	* 11' 10' 9"
>1/2 METER TO 1 METER (SEE L ₃)	* 16'	* 8'	* 10' 7"	* 12' 8' 6"	* 10' 7"	* 5'	* 7' 6"	* 12' 11'	* 12' 10' 9"
>1 METER TO 3 METERS	* 16'	* 8'	* 10' 8"	* 12' 11' 6"	* 10' 7"	* 5'	* 7'6" 6'	* 13' 12'	* 12'6" 11'9"

>greater than

Pools with diving boards higher than three (3) meters, and/or pools with diving platforms shall be constructed in accordance with the standards of the FINA, NCAA and USD and these devices shall be labeled "COMPETITIVE DIVING ONLY."

Diving boards shall have guardrails on both sides which are at least thirty (30) inches high and extend from the back end of the board to at least one (1) foot past the pool edge. Diving boards that are greater than one (1) meter high shall have handrails on both sides of the ladder/steps and the guardrails should be completely closed but in no case shall the spacing between them exceed twelve (12) inches.

All diving boards shall be level and shall have slip resistant surfaces. All supports, steps, and railings shall be made of material which is of sufficient strength to handle the anticipated load. Trampoline type diving facilities and rope drops shall be prohibited. With the exception of competitive

diving, any adjustable fulcrum diving board shall have the fulcrum locked in the maximum forward position.

~~Any diving board in existence on the effective date of these Regulations (April 15, 1990) that cannot comply with the requirements of this Section by being shortened and/or lowered, should be removed. Also, In order for the replacement of any diving board stand, or the replacement of any diving board stand and diving board to be approved, the pool shall be in compliance with the requirements of this Section.~~

SECTION 26.4 RECIRCULATION SYSTEM

26.401 *General Requirements* - Each pool shall have its own recirculation system. The recirculation system shall consist of, but is not limited to: a pump, a flow measuring device, a removable strainer with spare basket (not required on vacuum filters), a filter with at least one (1) pressure gauge, an automatic disinfectant feeder, piping, deep end floor outlets/drains, a perimeter overflow gutter or surface

skinners, return inlets, valves and other necessary equipment. The recirculation system shall be designed to provide a minimum of four (4) turnovers of the pool volume per day [one (1) every six (6) hours] against the maximum head. In the pump/filter area, each suction and discharge line shall have a manual control valve capable of regulating flow or shutting off flow completely. If the required flow rate is provided collectively by multiple pumps, all of these pumps shall operate by a single control switch. The difference between the minimum required flow rate in gallons per minute (gpm) (based on the type of pool) and the maximum allowable flow rate in gpm (based on the type of filtration) shall be at least ten (10) gpm. ~~Water velocities through piping should not exceed the following: three (3) feet per second in gravity pipe; five (5) feet per second in suction pipe and ten (10) feet per second in pressure pipe.~~

26.402 *Recirculation Pump* - All recirculation pumps shall be of adequate capacity to provide the required turnover rate, a sufficient backwash rate and sufficient suction for any vacuum fittings. If the pump or any suction side piping is located above the pool water level, the pump shall be self-priming. All recirculation pumps shall be equipped with the necessary piping, valves, etc. such that pool water can be pumped directly to waste. This line shall terminate above any drain entry point by a distance of at least twice its diameter. For the purpose of confirming or determining the flow rate, all recirculation pumps shall be equipped with pressure gauges on both the suction and pressure side the pump ~~and the pump curve should be conspicuously posted nearby.~~

26.403 *Rate of Flow Indicator* - At least one (1) rate of flow indicator reading in gpm shall be installed after filtration on the pool return line. The indicator shall be easily accessible for viewing, in proper working condition when the pool is open, sized such that the design flow rate is in the mid range of the indicator, and capable of measuring at least fifty (50) percent more than the design flow rate. The clearance upstream and downstream from the indicator shall comply with the manufacturer's specifications. In lieu of the above, a pre-set flow control valve with a direct mounted meter kit and conversion chart may be used.

26.404 *Floor Outlets/Drains* - All pools shall be provided with at least two (2) floor outlets/drains at the deepest point which: are connected to the recirculation system through the same line; are at least six (6) feet apart on centers (for special designs, as far apart as possible or on different planes); ~~are not more than fifteen (15) feet from the side wall~~; are equipped with a flow control valve(s) near the recirculation pump; have an antivortex cover or a twelve inch by twelve inch (12" x 12") grate or larger; and can completely drain the pool. ~~The velocity of the water entering the outlet/drain should not exceed one and one half (1-1/2) feet per second.~~ All drain outlet pipes shall be recessed within the fitting or in a pit and equipped with a

cover which can only be removed with a ~~Phillips screwdriver or a special tool.~~ The width and length of slot openings in the cover shall not exceed one half (1/2) inch and one (1) inch respectively.

26.405 *Perimeter Overflow Gutters and Surface Skimmers* - All pools shall have either perimeter overflow gutters or surface skimmers (not recommended for pools with a water surface area greater than 2500 square feet) which: are capable of conducting one hundred (100) percent of the required flow rate; are connected to the recirculation system; have flow control valves near the recirculation pump; and effectively remove any floating material. If perimeter overflow gutters are used, they shall be continuous around the pool with a uniform level rim which is not more than twelve (12) inches below the deck and which will provide a suitable handhold. Gutters shall be designed so that the channel is easily accessible for cleaning and presents no entanglement hazard to bathers. If the gutters are recessed, the access opening shall be at least four (4) inches. Gutter drains shall be provided at uniform intervals ~~not to exceed fifteen (15) feet~~ and the gutter shall slope sufficiently to these drains. The design shall ensure that the recirculation pump receive a continuous supply of water at all times either by adequate surge capacity within the gutters or a surge/balancing tank. Any perimeter overflow gutter with a submerged protruding edge, shall have a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of the gutter. ~~Under normal operating conditions the flow rate through the gutter should be one hundred (100) percent of the design flow rate.~~

If surface skimmers are used, they shall be NSF listed and at least two (2) shall be provided. For pools that are greater than one thousand (1000) square feet of water surface, one (1) additional skimmer shall be provided for each additional (500) square feet of pool water surface or fraction thereof. Skimmers shall be optimally located around the pool perimeter and the recirculation system shall be designed such that the flow through each skimmer is at least twenty (20) gpm. All skimmers shall have individual flow controls devices, an equalizer line (except WP pools), an easily removable, cleanable basket or screen and a cover. ~~Under normal operating conditions the total flow rate through the skimmers should be at least eighty (80) percent of the design flow rate.~~

26.406 *Inlets* - ~~With the exception of WP and SpP pools,~~ All pools shall have at least four (4) inlets, either on the side walls or on the floor, which are connected to the recirculation system. Side wall inlets, with the exception of those built into a gutter, shall discharge at a depth of at least twelve (12) inches below the normal water level. The distance between side wall or bottom inlets, measured along the wall or floor surface, shall not exceed twenty (20) feet and the spacing between any floor inlet and the side wall, measure along the surface, shall not exceed ten (10) feet.

When wall inlets are used, an inlet shall be provided within five (5) feet of each corner and one (1) in each recessed step area. The inlets, either by adjustability or by design, shall provide the necessary flow to maintain the required disinfectant residual and chemical quality evenly throughout the pool.

26.407 *Vacuuming* - All pools shall have the capability of vacuuming the bottom either through a skimmer, a separate vacuum fitting or a portable vacuum system. If a portable vacuum system must be used, it shall be stored on-site when the pool is open. Vacuuming through a portable vacuum system that is connected to the potable water supply shall be prohibited. In line and portable vacuum pumps shall be equipped with a removable strainer with a spare basket.

26.408 *Piping* - Recirculation system piping shall be made of non-toxic material ~~and should be sized such that head losses do not exceed one (1) foot per hundred (100) feet on suction lines and three (3) feet per hundred (100) feet on discharge lines; and flow velocities do not exceed three (3) feet per second in gravity, six (6) feet per second under suction, and ten (10) feet per second under pressure.~~ All plastic piping shall: be labeled with the manufacturer's name and the NSF logo for potable water; appear in the current NSF Listing "Plumbing and Related Products", or approved equivalent; and be used/installed in accordance with the manufacturer's specifications.

26.409 *Multiport Valves* - All multiport valves shall be NSF listed.

26.410 *Pool Water Heaters* - All gas heaters shall be design-certified by the American Gas Association (AGA) and shall display a rating data plate and the AGA seal. All electric heaters shall be Underwriters Laboratories (UL) approved and shall display the UL seal. All heaters shall have sufficient piping and valves to permit isolation and removal of the heater from the system.

26.411 *Equipment Access, Freezing Protection and Drainage* - Easy access shall be provided to all parts of the recirculation system that must be inspected or serviced. All piping and equipment that is subject to freezing shall be provided with an adequate means of draining. At least thirty (30) foot candles of illumination shall be provided around all equipment. In order to prevent standing water, all equipment rooms shall be adequately graded toward floor drains or areas where the water will have a free unobstructed flow to points of disposal.

SECTION 26.5 FILTRATION SYSTEM

26.501 *General Requirements* - Each pool shall have its own filtration system. All filters shall bear the manufacturer's name, the model #, the surface area and the filter shall be NSF listed. All filtration systems shall be sized such that the maximum allowable filtration rates are not exceeded and shall be operated such that the passage of unfiltered water will be prevented. The filter effluent water

shall have a turbidity of five tenths (.5) NTU or less. All filters shall be capable of being totally drained through a manual valve or by disconnecting a union, and all filtration surfaces shall be accessible for inspection, maintenance or replacement. Filters that require backwashing shall have a pressure gauge(s) for determining the time to backwash, and a site glass for observing the backwash water clarity. The backwash discharge line shall terminate above the drain entry point by a distance of at least twice its diameter. All pressure filters shall be equipped with manual or automatic air release valves, or shall be self-purging. If a manual air release valve is present, specific instructions explaining its use shall be provided and shall be conspicuously posted on or near the filter. In multiple filter installations filter piping shall be valved such that each filter can be isolated for repairs, while other filters remain in service.

26.502 *Rapid Sand Filters* - All media shall meet all of the specifications of the filter manufacturer. In multiple filter installations filter piping shall be valved such that each filter can be individually backwashed. The filtration rate for rapid sand filters shall not exceed three (3) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

26.503 *High Rate Sand Filters* - All media shall meet all of the specifications of the filter manufacturer. The filtration rate for high rate sand filters shall not exceed twenty (20) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

26.504 *Diatomaceous Earth Filters* - If diatomaceous earth filters are equipped with a pressure type separation tank, there shall be no manual valves on the effluent line, and the following statement or equivalent shall be conspicuously posted on the top of the separation tank and at the pump control switch "Do not start the pump without opening the manual air release on the separation tank and checking to make sure that the top of the separation tank is securely attached." Also, any manufacturer's instructions for the proper use of this separation tank shall be displayed either on the top of the separation tank or on the wall nearby. The filtration rate for diatomaceous earth filters shall not exceed two (2) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less. Diatomaceous earth filters that have an NSF listing for slurry feed shall not exceed a filtration rate of 2.5 gpm per square foot of filter area. ~~All diatomaceous earth filters that are backwashed to waste should have a settling tank/chamber for capturing the earth.~~

26.505 *Cartridge Filters* - All pools with cartridge filtration systems shall have at least one (1) spare cartridge for each cartridge in use, which is clean and ready for installation, along with at least one (1) vat which is capable of submerging all of the cartridges from one filter vessel. Pools with modular media cartridge filtration shall have at least one (1) spare cartridge for each type of cartridge in use, which is clean and ready for installation. When cartridges

become clogged to the extent that cleaning does not restore them, or they become damaged, they shall be discarded. The filtration rate for cartridge filters shall not exceed three hundred seventy-five one thousandths (.375) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

SECTION 26.6 POTABLE WATER SUPPLY, POOL WATER QUALITY/TESTING, CHEMICALS AND WASTEWATER

26.601 *Potable Water Supply* - All pools shall have a water supply which: is approved by the Division; is in compliance with the requirements of the "State of Delaware Regulations Governing Public Drinking Water Systems;" and is of adequate capacity to meet peak demands while maintaining at least twenty five (25) pounds per square inch (psi) and not more than one hundred (100) psi at all points in the system. All drinking fountains shall be in good working order. Cross connections between the potable water supply and the pool water shall be prohibited. Hose bibbs shall be located such that they do not constitute a tripping hazard and shall be equipped with vacuum breakers or other backflow prevention devices approved by the Division.

26.602 *Fillspout* - All pools shall have a permanent fillspout that shall be air gapped at least two (2) pipe diameters above the pool rim, or the rim of any vessel or pipe that connects to the pool. In order to minimize the possibility of creating a tripping hazard, all fillspouts that are on the deck shall be located immediately next to one of the pool ladders, or another approved location. The portion of the water line passing through a concrete deck shall either be non-plastic piping or shall be inside a metal sleeve. All pools that ~~are in existence on the effective date of these Regulations and do not have a permanent fillspout, or~~ have a fillspout that is a potential tripping hazard ~~should~~ shall take whatever steps are appropriate to ~~install the fillspout or~~ eliminate the ~~potential tripping hazard. All fillspouts located on the pool deck should be braced.~~

26.603 *Clarity* - The water in all pools shall be sufficiently clear and the lighting shall be sufficient such that all areas of the pool, and either of the following are clearly visible from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field and placed on the bottom at the deepest point. The turbidity of the pool water shall be five tenths (.5) NTU or less.

26.604 *Bacteriological Quality* - If samples are taken for the heterotrophic plate count test [standard plate count (SPC)], the result shall be less than (<) two hundred (200) colonies per milliliter. If samples are taken for the total coliform test, when the membrane filtration (MF) technique is used, the result shall be less than (<) one (1) colony per one hundred (100) milliliters of sample, when the multiple tube fermentation or most probable number (MPN) method

is used, none of the conformed portions shall show the presence of the coliform group [result reported as less than (<) 2.2] and when the presence/absence test is used, the result shall be absent.

Samples shall be taken by, or required by the Division whenever it is deemed necessary. For the purpose of determining compliance with this Section, samples may be considered only if they have been analyzed by the Division or by another approved laboratory.

26.605 *Chemical Quality* -The chemical quality of pool water shall ~~not cause any irritation to the eyes or skin of bathers and~~ shall be in compliance with the requirements of the "State of Delaware Regulations Governing Public Drinking Water Systems." The pH shall not be less than 7.2 or greater than 7.8. ~~All pool water should be balanced (pH, calcium hardness, alkalinity, and temperature) and maintained in accordance with either Langelier Index/Water Balance method shown in Appendices A and B, or an approved equivalent, and the total dissolved solids (TDS) level should not exceed one thousand five hundred (1500) parts per million (ppm).~~ Any chemical added directly or indirectly to a pool shall be approved by the Division, registered with the U.S. Environmental Protection Agency, used strictly in accordance with the manufacturer's directions and properly labeled in accordance with the Hazardous Chemical Information Act 16 Del. C. Chapter 24 (Right to Know). ~~The Material Safety Data Sheet (MSDS) for each chemical should be kept at the pool.~~

~~All pools should have an automatic pH adjustment chemical feeder.~~ Any pool using gas chlorine, and any pool with a documented history of pH level violations shall have an automatic pH adjustment chemical feeder that: is NSF listed; is approved by the Division; has approved anti-siphon protection; and is wired such that it feeds only when the recirculation pump runs (shall be done on all pools which are in existence on the effective date of these Regulations when either the chemical feeder or recirculation pump are replaced). The manual addition of approved non-disinfectant chemicals shall be permitted only in special situations (e.g. trying to achieve water balance), which require that the pool shall remain closed for at least one (1) turnover and until such time as the chemical is thoroughly and evenly dispersed throughout the pool.

26.606 *Disinfection* - All pools shall be disinfected with an approved halogen that imparts an easily measured residual and is fed through an automatic feeder that: is NSF listed ~~(with the exception of gas feeders);~~ is approved by the Division; has approved anti-siphon protection; is capable of providing a dosage of at least ten (10) ppm for outdoor pools and a dosage of five (5) ppm for indoor pools (shall be done on an existing pool when the disinfectant feeder is replaced); and is wired such that it feeds only when the recirculation pump runs (shall be done on all pools which are in existence on the effective date of these Regulations when either the

disinfectant feeder or recirculation pump are replaced). A flow-through (erosion) feeder shall feed only the disinfectant(s) specified by the manufacturer. All shall add the disinfectant downstream from the filter and heater. All pool disinfectants shall be registered with the U.S. Environmental Protection Agency and approved by the Division. Manual addition of an approved halogen disinfectant shall be permitted only in special situations (e.g. superchlorination), which require that the pool be closed. After this manual addition has been completed, the pool shall remain closed: for at least one (1) turnover and until such time as the chemical is thoroughly and evenly dispersed throughout the pool; and the automatic feeder is operating properly if it was not at the time of manual addition. Use of gas chlorine shall be prohibited. Use of stabilized chlorine (cyanuric acid) in indoor pools shall be prohibited. In order for any non-halogen to be approved as a stand alone disinfectant, satisfactory performance shall be demonstrated during an NSF evaluation.

Pools using gaseous type chlorination shall comply with the following requirements:

- a. ~~All gas chlorine shall be fed by use of a vacuum injector system. Direct cylinder feed shall be prohibited.~~
- b. ~~All chlorine gas feed and storage shall be located at or above ground level in a separate room used for nothing else; and all openings from this room to any other rooms shall be sealed.~~
- c. ~~The chlorine room shall be provided with a light and a positive ventilation fan with a floor level discharge to the outdoors that provides one complete air change per minute and operates continuously while the pool is open.~~
- d. ~~The chlorine room shall have a shatter resistant~~

~~inspection window and a door that opens outward to the building exterior.~~

- e. ~~Light and fan switches shall be located outside the chlorine room.~~
- f. ~~All chlorine cylinders shall be securely fastened or restrained against falling and all chlorine cylinders in use (connected to the feeder) shall be mounted on scales or equipped with an automatic switchover device. All cylinders should be stored in the chlorine room.~~
- g. ~~The chlorinator shall be vented outdoors above grade and the vent shall be screened.~~
- h. ~~If floor drains must be installed, they shall discharge outside of the building and shall not be connected to any other drains.~~
- i. ~~The chlorine room temperature shall be at least 60°F at all times and shall be protected against excessive heat.~~
- j. ~~A self contained breathing apparatus, and a bottle of ammonia for leak detection, shall be kept readily accessible at a location outside the chlorine room.~~
- k. ~~A gas chlorine warning sign shall be posted outside the room.~~
- l. ~~A new seal shall be installed each time a cylinder is changed.~~
- m. ~~A chlorine leak detection device with audible and visual alarm should be provided.~~

All pools shall/~~should~~ be disinfected in accordance with the following requirements/~~recommendations~~:

	REQUIRED Minimum Level	RECOMMENDED Level	RECOMMENDED Maximum Level
Free Chlorine	0.5 ppm	1.0-3.0 ppm	5.0 ppm
Free Chlorine (Spa Pool)	1.0 ppm	2.0-5.0 ppm	10.0 ppm
Free Chlorine with Cyanuric Acid	1.5 ppm	1.5-3.0 ppm	5.0 ppm
Free Chlorine with Cyanuric Acid (Spa Pool)	2.0 ppm	2.0-5.0 ppm	10.0 ppm
Bromine	1.0 ppm	2.0-4.0 ppm	6.0 ppm
Bromine (Spa Pool)	2.0 ppm	3.0-6.0 ppm	10.0 ppm
Cyanuric Acid	None	30-50 ppm	*100 ppm
Combined Chlorine	None	0.0 ppm	0.2 ppm
ORP**	**650 mV	**700-750mV	

*required**(recommended)

~~NOTE Pools using bromine should use ozone as a supplementary disinfectant/oxidizer.~~

26.607 *Water Testing Equipment and Sampling Frequency* - All pools shall have approved testing equipment for pH, disinfectant residual, alkalinity, and calcium

hardness. For disinfectant residual, the DPD (Diethyl-p-Phenylene Diamine) method, or any other method in the current edition of Standard Methods for the Examination of Water and Wastewater, shall be used. If the disinfectant is chlorine, the test kit shall be capable of measuring both free and total chlorine residual. For pH, the phenol red colorimetric method, or any other method in the current edition of Standard Methods for the Examination of Water

and Wastewater, shall be used and the test kit shall have a range of at least 6.8-8.2. In addition to these parameters, pools that use a stabilized halogen shall have approved cyanuric acid testing equipment.

All chemical test kit reagents shall be dated when received, and shall be replaced just prior to the start of each outdoor pool season, and at least yearly for indoor pools, with the exception of phenol red which shall be replaced at least every six (6) months.

pH and disinfectant residual shall be measured daily, prior to the pool opening, and as often as necessary while the pool is open (recommended every one (1) to two (2) hours) in order to ensure the proper levels.

Alkalinity, calcium hardness and cyanuric acid (if applicable) shall be measured after each addition of make up water and at least weekly. All sample results shall be recorded along with the date, time and sample location (area of the pool). Records of sample results shall be kept at the pool for at least one (1) year, shall be available for viewing by any representative of the Division during a sanitary survey and shall be submitted to the Division upon request. If any other substance is added to the pool on a regular basis (e.g., copper/silver from a supplemental disinfection system), the Division may require testing to ensure that the concentrations do not exceed acceptable levels.

26.608 Pool Water Level and Recirculation System - When the pool is open, the water level shall be maintained at an elevation suitable for continuous flow into the ~~perimeter overflow gutter~~ or surface skimmers or intermittent flow into the gutter as bathers enter. The recirculation system shall operate continuously (24 hours per day), with the exception of the automatic disinfectant feeder when the disinfectant level approaches or exceeds the upper recommended level. Within three (3) years of the effective date of these Regulations (2003) each pool shall have its own recirculation, filtration and disinfection system. All pools shall have the capability of pumping water to waste either directly or via filter backwash. ~~A dye test should be performed at least annually on every pool.~~ The Division may require a dye test to ensure that the recirculation system is providing even and complete recirculation throughout the pool.

26.609 Chemical Storage - All chemicals, including test kits, shall be stored in accordance with the storage recommendations on the manufacturer's label and the MSDS, and they shall be stored in areas that are not easily accessible to bathers or other unauthorized personnel. All pools shall keep adequate quantities of chemicals on hand such that shortages are not experienced. "NO SMOKING" signs shall be conspicuously posted in all chemical storage areas.

26.610 Wastewater Disposal - Cross connections between the pool recirculation system and any wastewater system, including the filter backwash drain, shall be

prohibited. The backwash discharge line shall terminate above the drain entry point by a distance of at least twice its diameter. ~~All wastewater, including filter backwash water, should discharge into facilities that are in compliance with all appropriate state and local codes.~~

~~26.611 Ozone - All ozone systems should be NSF listed.~~

SECTION 26.7 OPERATION, MAINTENANCE, GENERAL SANITATION PERSONNEL, SUPERVISIOIN AND SAFETY

26.701 Operation and Maintenance - All pools, their premises, and appurtenances, shall be operated and maintained at all times with regard to the safety of bathers and employees. All plumbing shall be properly installed and maintained. During an electrical storm, use of any pool (indoor or outdoor) shall be prohibited. Alcoholic beverages shall be prohibited in the pool and on the pool deck (area required by Section 26.308). Food and beverages shall be prohibited in the pool and within four (4) feet of the pool edge. Glass or other breakable containers, utensils, etc., shall be prohibited within the pool fence, pool room or bathhouse facilities. Pool walls and floors shall be refinished when safe sanitary conditions cannot be maintained. Any deck/walkway areas that are hazardous to patrons or their bare feet (e.g., tripping, abrasions, splinters, etc.) or do not properly drain, shall be repaired or replaced such that the hazard or drainage problem is eliminated. Any electrical hazard shall be eliminated. All pools that have a slope break, shall install a line of contrasting color one (1) to two (2) feet on the shallow side of the break directly under the safety line that is either: solid and at least two (2) inches wide or intermittent with sections that are at least four (4) inches by four (4) inches and not more than one (1) foot apart on centers. All pools which have steps or benches, shall install a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of each pool step or bench. All pools which have any type of overflow gutter or a safety ledge with a submerged protruding edge, shall install a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of the gutter.

26.702 General Sanitation and Sanitary Facilities - All pools and related facilities shall be maintained in a clean sanitary condition. The pool floor, walls, deck, walkways and bathhouse facilities shall be cleaned and disinfected with an approved disinfectant as often as necessary in order to maintain an environment which is free of sediment, dirt, algae, grass/weeds and foreign objects. All garbage shall be stored in containers which are sufficient in number and properly covered so as not to attract vermin. Effective control measures shall be utilized to minimize or eliminate the presence of rodents, flies, roaches or other vermin. All pools shall have at least one (1) permanent or portable water

closet for the lifeguard/attendant, which is accessible when the pool is open and is located such that the path of travel from the nearest pool entrance/exit does not exceed five hundred (500) feet. If a portable water closet is provided, it shall be properly vented, designed to exclude flies, equipped with a self-closing door, provided with toilet tissue, and maintained in a clean sanitary condition ~~and. This water closet should be located contiguous to the pool deck or pool room.~~

26.703 *Animals* - With the exception of guide animals for **[persons with disabilities]**, animals shall be prohibited within the pool fence, pool room or bathhouse facilities.

26.704 *Bathing Suits* - It is recommended that all bathers ~~should~~ wear bathing suits. A bathing suit is ~~should~~ be a garment designed for that purpose which covers the buttocks (male and female) and breasts (female). If anyone who is not toilet trained is going to use a pool, the operator shall ~~should~~ take whatever steps are necessary to ensure that fecal material does not enter the water (e.g. requiring the use of a swimsuit diaper). Should fecal material enter any pool, the pool shall be closed immediately and the operator shall follow Division procedures for reopening.

26.705 ~~[Employee/]~~ *Bather Health* - ~~[No person with evidence of a communicable or contagious disease shall be employed at a pool. No person with evidence of a communicable disease, cough, cold, open sore or bandaged wound shall be allowed to enter the pool water except where certified by a physician not to have a disease in the communicable stage. Any person with evidence of an open sore, a bandaged wound or diarrhea shall be prohibited from entering the pool water.]~~ Any person suspected of being under the influence of alcohol or drugs shall be prohibited from entering the pool.

26.706 *Lifeguard* - Unless exempted by 16 Delaware Code, each pool that is ~~greater than 250 square feet (water surface) or greater than four (4) feet deep (any portion)~~ shall have a lifeguard on duty when the pool is open. ~~It is recommended that there be a minimum of two (2) lifeguards on duty when the pool is open and further recommended that there be one (1) lifeguard per either: fifty (50) bathers; or two thousand (2000) square feet of pool water surface; or fractions thereof.~~ If a lifeguard who is working alone must leave poolside, for whatever reason, he/she shall take whatever steps are necessary to ensure that no one remains in or enters the water in his/her absence. Copies of training/certification documentation for all lifeguards currently employed by the pool's management shall be present at the pool when it is open ~~and should be available for viewing by patrons.~~ No person shall serve as a lifeguard unless he or she meets all of the following training requirements and can produce the appropriate documentation upon request of the Division:

a. Current certification in National YMCA Lifeguarding, or American Red Cross Basic Lifeguarding,

Ellis & Associates National Pool & Waterpark Lifeguard Training, Aquatic Resource Service Associates Aquatic Rescue Training or approved equivalent.

b. Current certification in American Red Cross, American Heart Association or National Safety Council (NSC) Cardiopulmonary Resuscitation (CPR), or approved equivalent, that includes training in: one (1) person adult CPR, child CPR and infant CPR.

c. Current certification in American Red Cross Standard First Aid, or approved equivalent, that includes training in: obstructed airway, artificial breathing, control of bleeding and treatment of shock.

26.707 *Attendant* - If none of the pools at a facility require a lifeguard based on ~~surface area or depth~~, each pool, with the exception of those exempted by Title 16 Delaware Code, shall have an at least one (1) attendant with approved training on duty when the pool is open. If an attendant who is working alone must leave poolside, for whatever reason, he/she shall take whatever steps are necessary to ensure that no one remains in or enters the water in his/her absence. In facilities with a spa pool(s) (SpP) only, if the attendant is not in direct view of the pool, he/she shall be located such that the poolside alarm required by Section 26.720 can be easily heard. Copies of training/certification documentation for all attendants currently employed by the pool's management shall be present at the pool when it is open ~~and should be available for viewing by patrons.~~ No person shall serve as an attendant unless he or she meets all of the following training requirements and can produce the appropriate documentation upon request of the Division:

a. Current certification in American Red Cross, American Heart Association or NSC Cardiopulmonary Resuscitation (CPR), or approved equivalent that includes training in: one person adult CPR, child CPR and infant CPR.

b. Current certification in American Red Cross Standard First Aid, or approved equivalent, that includes training in: obstructed airway, artificial breathing, control of bleeding, and treatment of shock.

[c. Within three (3) years of the effective date of these Regulations (June 10, 2003) current certification in American Red Cross Basic Water Rescue, or approved equivalent.]

26.708 *Lifeguard Warning Sign* - Any exempted pool or any pool with a maximum depth of four (4) feet that does not have a lifeguard or attendant on duty shall conspicuously post the following sign at the pool entrance(s) and at least one (1) other location inside the pool room/fence: "WARNING NO LIFEGUARD ON DUTY" in letters at least four (4) inches high along with "CHILDREN UNDER THE AGE OF SIXTEEN (16) SHOULD BE ACCOMPANIED BY A PARENT OR GUARDIAN" in letters at least one (1) inch high. (NOTE - A guardian is an adult designated by a parent who is responsible for the

children and their behavior).

26.709 *Lifeguard Stand* - All pools with a water surface area greater than two thousand (2000) square feet shall have at least one (1) lifeguard stand ~~and additional stands should be provided based on each additional two thousand (2000) square feet or fraction thereof.~~ The lifeguard stand shall be at poolside, however, no part of the stand shall extend past the edge of the pool. ~~The lifeguard stand seat should be four (4) to six (6) feet above the pool deck.~~

26.710 *Unsupervised Solo Bathing* - Unsupervised solo bathing shall be prohibited at all pools with the exception of those exempted by 16 Delaware Code.

~~*Maximum Bathing Load* - In SwP pools, the maximum bathing load shall be based on one (1) bather per twenty-five (25) square feet of pool water surface. If a diving board is present and in use, the three hundred twenty (320), three hundred sixty (360) or four hundred (400) square feet of diving board water entry area per device (Sections 26.110 and 26.320) shall not be included in computing the maximum bathing load. If a swimming pool slide is present and in use, the two hundred fifty-six (256) square feet of swimming pool slide water entry area (Section 26.135) shall not be included in computing the maximum bathing load.~~

26.711 *Injury, Resuscitation or Death* - The Division shall be notified within twenty-four (24) hours of any incident at a pool which: requires referral to a hospital, doctor or other facility for medical attention; requires resuscitation; or results in death. The notification shall be followed up by a written report within thirty (30) days which contains all pertinent details of the incident.

26.712 *Pool Security* - All entrances to indoor pools shall be equipped with locks and each entrance shall be locked when the pool is closed. All outdoor pools shall be enclosed by a fence which provides a barrier that is at least four (4) feet high everywhere [six (6) feet recommended], measured from ground level outside the fence. All pool fences shall be equipped with a locking gate which shall be locked when the pool is closed.

26.713 *Depth Markings* - With the exception of wading pools and spa pools, the water depth of all pools, in feet to the nearest one half (1/2) foot, shall be plainly marked at or above the water surface on the vertical pool wall, and on the coping or deck within eighteen (18) inches of the pool edge. For pools with open gutters, the depth marking required on the vertical pool wall may be located on the wall of the room for indoor pools, and on the fence for outdoor pools. These pairs of depth markings shall be located at the points of minimum depth, maximum depth, intermediate depths at no more than two (2) foot depth increments ~~with one (1) foot increments recommended~~, breaks in slope and on each end of the pool. All depth markings shall be at least four (4) inches high, of a contrasting color and spaced no

more than twenty-five (25) feet apart on the pool perimeters. Markings on the pool walls shall be positioned to be read from the water. Markings on the deck shall be positioned to be read while standing on the deck and facing the pool and shall be slip resistant.

26.714 *Safety Line* - Whenever non-swimmers are in the water, all pools that have a slope break shall have a safety line located at least one (1) foot and not more than two (2) feet on the shallow side of the slope break, directly above the line on the bottom required by Section 26.701. The safety line shall have clearly visible colored floats spaced not more than five (5) feet apart. The safety line shall be of sufficient size and strength to provide a handhold which will support any bather who is in need of help and the connections to the pool wall shall be recessed.

26.715 *Safety Equipment* - All pools shall have the following safety equipment which shall be easily accessible:

a. A telephone, within or immediately adjacent to the pool fence or room, with appropriate emergency numbers posted nearby. Pay telephones are acceptable if they do not require coins in an emergency. In lieu of a telephone, a manually activated emergency alarm system that alerts someone else to dial the telephone is acceptable. All of the above must be able to send and receive calls.

b. Two blankets.

c. A first aid kit with the current edition of the American Red Cross standard first aid book or equivalent. ~~The kit should include at least the following: soap, ice packs, bandaids, compresses (2"x2" and 4"x4"), gauze roller bandages, two (2) triangle bandages, surgical gloves and a mouth to mouth mask.~~

In addition to the above, all SwP pools without a lifeguard on duty (those exempted by 16 Delaware Code) shall also be equipped with the following safety equipment which shall be easily accessible:

d. One (1) or more lightweight poles at least twelve (12) and not more than fifteen (15) feet long, and equipped with a shepherd's hook.

e. One ring buoy at least eighteen (18) to twenty-four (24) inches in diameter attached to at least fifty (50) feet of rope.

In addition to the above, all SwP pools with a lifeguard on duty shall also be equipped with the following safety equipment that shall be easily accessible:

f. One rigid backboard (long board) with at least three (3) attached ties/straps which is compatible for transport in the Delaware State Police MED-E-VAC helicopter, meets the design requirements of Emergency Medical Services, and is approved by the Division. Six (6) attached ties/straps are recommended. If a pool, because of size, will not accommodate a long board being placed under a bather, a reduced backboard (short board) with at least one (1) tie/strap may be substituted. Current specification requirements for backboards are available upon request from

the Division. (NOTE - This is not required for exempted pools that operate without a lifeguard).

g. In place of the ring buoy, at least one (1) rescue tube for each lifeguard on duty. ~~(NOTE - This is not required for exempted pools that operate without a lifeguard).~~

26.716 *Diving* - With the exception of official competition or when there is qualified instruction, diving shall be prohibited into water that is five (5) feet deep or less. At SwP and WSF splash pools, all areas where the water is five (5) feet deep or less shall be clearly labeled "No Diving" on the coping (edge of the deck). ~~For indoor pools, the "No Diving" markings may be approved on the walls of the room if it can be demonstrated that it is not feasible to provide them on the edge of deck.~~ The "No Diving" markings shall be: of a contrasting color; easily readable; slip resistant and at least four (4) inches high consisting of the words "No Diving," the words "No Diving" in combination with the picture (international) sign (diver inside a red circle with a red line across), or other approved markings. The number of markings shall be at least equal to the number of depth markings within the "No Diving area" ~~and shall be spaced no more than twenty-five (25) feet apart on the perimeter of the "No Diving" area.~~

26.717 *Shallow End Starting Blocks* - Shallow end starting blocks (water depth that is five (5) feet or less) shall be removed when there is no official competition, instruction or practice. Shallow end starting blocks that are not removable shall be labeled "starting blocks shall be used only during official competition or when there is qualified instruction."

26.718 *Wading Pool Supervision* - It is recommended that all children using a wading pool ~~should~~ be supervised by a responsible person who is at least sixteen (16) years of age.

26.719 *Attendant Alarm* - Any SpP pool, with the exception of those at facilities exempted by ~~Title~~ 16 Delaware Code, which is located such that it is not in direct view of the attendant shall have, in the immediate vicinity of the pool, a clearly labeled alarm device that can be activated when a bather is in trouble and is easily heard throughout the area or building. This alarm shall product a distinctly different sound than that of the high temperature alarm.

26.720 *Spa Pool Warning Sign* - A clearly visible sign shall be mounted at the entrance of each SpP pool facility or adjacent to each SpP pool and shall include, but is not limited to, the following:

- a. All bathers should take a shower prior to entering.
- b. Enter and exit slowly and cautiously.
- c. Unsupervised solo bathing is prohibited.
- d. Use by anyone under sixteen (16) years of age is prohibited unless there is documented written permission from his or her physician.

e. Elderly persons and anyone with heart disease, diabetes, high or low blood pressure, or anyone under a physician's care should not enter without consulting with their physician.

f. Pregnant women should not enter unless the temperature is less than 102°F.

g. Hot water immersion while under the influence of alcohol, anticoagulants, antihistamines, vasoconstrictors, vasodilators, stimulants, hypnotics, narcotics or tranquilizers may be hazardous to your health and is prohibited.

h. Observe a fifteen (15) minute time limit, then shower, cool down and return if your wish. Longer exposures to this water may result in nausea, dizziness or fainting.

i. Do not submerge to the bottom of the pool, hair may become entangled in bottom outlet. Long hair should be tied in a knot or a bun in order to keep it out of the water.

j. No body lotions or oils are permitted.

26.721 *Spa Pool Timer Switch* - All SpP pools shall have a clearly labeled reversible aeration/jetting system timer switch with a fifteen (15) minute time limit located in the pool area but such that it cannot be reset from within the pool.

26.722 *Spa Pool Temperature/High Temperature Prevention System* - The water temperature in SpP pools ~~should not exceed 100°F and~~ shall not exceed 104°F. All spa pools shall have a thermometer that is measuring the current water temperature ~~and the temperature should be checked and recorded at least hourly when the pool is open.~~ If the thermometer is in the pool, it shall be non-glass and tethered. All SpP pools shall be equipped with an approved system that will ensure that the water does not exceed 104°F (e.g. a high temperature alarm, an automatic heater shut off device, etc.). The alarm shall produce a distinctly different sound than that of the attendant alarm. If there is a documented history of high temperature violations, the high temperature prevention system shall be replaced/upgraded. The Division may test the high temperature prevention system to ensure proper operation.

26.723 *Spa Pool Clock* - A clock that is easily readable from the SpP pool shall be provided.

26.724 *Water Slide Flume - Head of the Flume Personnel* - At least one person who meets the training requirements of Section 26.707a shall be stationed at the head of the flume to supervise and control the start of each slider, the spacing of sliders and the monitoring of the downward progress of each slider.

26.725 *Water Slide Flume - Splash Pool Attendant* - At least one attendant shall be stationed near the end of the flume/run-out slide to supervise and control the sliders as they arrive. Additional attendants shall be required at the discretion of the Division.

26.726 *Ventilation* - All bathhouse rooms, equipment rooms, chemical storage rooms and indoor pool rooms shall

be provided with adequate natural or mechanical ventilation such that satisfactory indoor air quality is maintained.

26.727 *Cartridge Filtration* - All pools with cartridge filtration systems shall have at least one (1) spare cartridge for each cartridge in use, which is clean and ready for installation, along with at least one (1) vat which is capable of submerging all of the cartridges from one filter vessel. Pools with modular media cartridge filtration shall have at least one (1) spare cartridge for each type of cartridge in use, which is clean and ready for installation. When cartridges become clogged to the extent that cleaning does not restore them or they become damaged, they shall be discarded.

SECTION 26.8 WADING POOLS

26.801 *General Requirements* - Except as otherwise noted previously and in this Section, WP pools shall comply with all other requirements of these Regulations.

26.802 *Location* - WP pools which are installed in conjunction with a SwP pool shall be located adjacent to the shallowest area of the SwP pool and shall be at least ten (10) feet away. ~~If any part of the SwP pool is greater than five (5) feet deep the WP pool shall be located at least twenty (20) feet away.~~

26.803 *Floor/Slope* - The slope of a WP pool floor shall not exceed six (6) inches in ten (10) feet (6"/10') and the floor shall be slip resistant.

26.804 *Fencing* - All WP pools which are indoors or within the confines of another pool fence shall be surrounded by a fence which is at least three (3) feet high and is equipped with a gate.

26.805 *Recirculation System* - The WP pool recirculation system shall be capable of providing a minimum of twenty-four (24) turnovers of the pool volume per day [one (1) every hour] against the maximum lead.

~~26.806 *Floor Outlets/Drains* - All WP pools shall be provided with at least one (1) of the following connected to the recirculation system and capable of draining the pool: two (2) antivortex floor outlets/drains as far apart as possible on the same line with a flow control valve; one (1) antivortex floor outlet/drain connected to the skimmer line with no individual flow control valves prior to the pump; or another approved fitting. The velocity of the water entering the outlet/drain should never exceed one and one half (1-1/2) feet per second.~~

26.806 *Perimeter Overflow Gutters and Surface Skimmers* - All WP pools shall be equipped with either a perimeter overflow gutter or at least one skimmer which is connected to the recirculation system and effectively remove any floating material. For WP pools that are greater than five hundred (500) square feet of water surface, one (1) additional skimmer shall be provided for each additional (500) square feet of pool water surface or fraction thereof. Under normal operating conditions the total flow rate through the skimmers should be one hundred (100) percent

~~of the design flow rate.~~

26.807 *Inlets* - All WP pools shall have at least two (2) inlets and in WP pools where only one (1) skimmer is required, the inlets shall be located such that they direct water toward the skimmer.

26.808 *Water Replacement* - The entire WP pool water volume should be replaced on at least a weekly basis either by normal backwashing or by pumping directly to waste.

SECTION 26.9 SPA POOLS

26.901 *General Requirements* - Except as otherwise noted previously and in this Section, SpP pools shall comply with all other requirements of these Regulations.

26.902 *Location* - A SpP pool shall be at least eight (8) feet away from any other pool.

26.903 *Decks and Walkways* - A deck at least four (4) feet wide shall be provided around at least fifty (50) percent of the perimeter of a SpP pool. If the SpP pool is free standing and not higher than thirty six (36) inches, the deck may be at floor level.

26.904 *Steps and Benches* - SpP pools which are greater than twenty-four (24) inches deep shall have at least one (1) step with at least one (1) handrail ~~(two (2) are recommended)~~ and all steps shall be located at a point where the deck is at least four (4) feet wide. The step tread shall be at least ten (10) inches deep and at least twelve (12) inches wide, and the step riser shall be at least seven (7) inches and not be more than twelve (12) inches high. When the bottom tread also serves as the bench, the height above the pool floor shall not exceed fourteen (14) inches. The first and last risers need not be uniform. Intermediate risers, however, shall be uniform in height. Benches that are installed in SpP pools shall be permanent and the depth of water over the bench shall not exceed twenty-four (24) inches. The top surface edge of all benches and steps shall be outlined in contrasting color by a marking line at least one (1) inch wide.

~~26.905 *Fencing* - SpP pools that are installed inside the confines of another pool fence are not required to be fenced.~~

26.905 *Recirculation System* - The SpP pool recirculation system shall be completely separate from the air/water jet system and shall be capable of providing a minimum of ninety-six (96) turnovers of the pool volume per day [one (1) every fifteen (15) minutes] against the maximum head.

~~26.906 *Floor Outlets/Drains* - All SpP pools shall be provided with at least one (1) of the following connected to the recirculation system and capable of draining the pool: two (2) floor outlets/drains as far apart as possible on the same line with a flow control valve; one (1) floor outlet/drain connected to the skimmer line with no individual flow control valves prior to the pump; or another approved fitting. The velocity of the water entering the outlet/drain should never exceed one and one half (1-1/2) feet per second.~~

26.906 *Perimeter Overflow Gutters and Surface Skimmers* - All SpP pools shall be equipped with either a perimeter overflow gutter or at least one skimmer which is connected to the recirculation system and effectively removes any floating material. ~~If the second option in 26.907 is chosen, any approved through the wall skimmer with a weir may be used.~~

26.907 *Inlets* - All SpP pools shall have at least two (2) inlets which are connected to the recirculation system and in SpP pools where only one (1) skimmer is required, the inlets shall be located such that they direct water toward the skimmer.

26.908 *Air Jetting System* - All air jetting (blower) systems shall have a raised loop or some other approved method to prevent water backup that could cause electrical shock hazards.

~~26.909 *Water Replacement* - The entire SpP pool water volume should be replaced on at least a weekly basis either by normal backwashing or by pumping directly to waste.~~

SECTION 26.10 WATER SLIDE FLUMES

26.1001 *General Requirements* - Except as otherwise noted previously and in this Section, WSFs shall comply with all other requirements of these Regulations.

26.1002 *Splash Pool Design and Depth* - In order to facilitate prompt, safe exiting by bathers, all splash pools shall have either a set of steps along the entire length of the exit side (side opposite the flume terminus), or a floor that slopes upward to meet the water surface. The steps or upward sloping floor shall have one (1) handrail per flume or one (1) handrail every seven (7) feet, whichever is greater. Ladders shall be prohibited. The depth of the splash pool at the flume end shall be at least three (3) feet and not more than four (4) feet, and this depth shall be maintained for at least twenty (20) feet in front of the flume end. The floor slope shall not exceed one (1) foot in seven (7) feet and all slopes shall be constant.

26.1003 *Flume End* - Flumes shall terminate either at a depth of at least six (6) inches below the splash pool operating water level, or not more than two (2) inches above the splash pool operating water level, provided the flume is level for at least the last ten (10) feet. The distance between the side of any flume end and the side of the splash pool shall be at least five (5) feet. The distance between the sides of adjacent flumes shall be at least six (6) feet and adjacent flumes utilizing the same splash pool shall be parallel at the ends.

26.1004 *Decks and Walkways* - A deck at least ten (10) feet in width shall be provided along the entire exit side of the splash pool. All walks and steps from the exit side to the top of the flume shall be: at least four (4) feet wide; constructed of concrete or other slip resistant material approved by the Division; smooth, easily cleanable and

properly maintained; and separated from any flume by a physical barrier such that people on the walks or steps cannot reach the flumes.

26.1005 *Recirculation System* - The WSF recirculation system shall be capable of providing a minimum of twenty-four (24) turnovers of the splash pool and pump reservoir volume per day [one (1) every hour] against the maximum head.

26.1006 *Pump Reservoirs* - Pump reservoirs shall be separate from the splash pool, shall be made of concrete or other impervious material with a smooth slip-resistant finish, and shall be connected to the splash pool by a weir. The minimum pump reservoir volume shall be equal to five (5) minutes of the combined flow rate in gpm of all water slide flume pumps. Pump reservoirs shall be accessible only to authorized individuals. Access decks shall be provided. The pump intake(s) shall be located in the pump reservoir and shall be designed to allow cleaning without danger of operator entrapment. The pump intake(s) shall be located in the pump reservoir and shall be designed to allow cleaning without danger of operator entrapment. The pump reservoir shall have a minimum of one (1) main drain with separate piping and valve to the filtration system. Pumps shall have check valves on all discharge lines.

26.1007 *Perimeter Overflow Gutters and Surface Skimmers* - All splash pools and pump reservoirs shall have either perimeter overflow gutters or surface skimmers which effectively remove any floating material and are connected to the recirculation system. Where perimeter overflow gutters are used, they are not required along the weirs or under the flume end. Where surface skimmers are used, one (1) shall be in the splash pool and one (1) shall be in the pump reservoir. Where an odd number of surface skimmers are required they shall be positioned appropriately based on the size of the splash pool and pump reservoir.

26.1008 *Disinfection* - WSF pools may be permitted to manually add a halogen disinfectant, in addition to the automatic feeder, if it can be done somewhere other than the flume or splash pool.

SECTION 26.11 SPECIAL PURPOSE POOLS

26.1101 *General Requirements* - Child care facility pools and other pools that do not fit into the categories SwP, WP, SpP, or WSF, of Section 26.123 because of the design, size, usage, or other factors, shall be classified as SpPP by the Division, provided that the design is within the limits of sound engineering practice. The Division shall require compliance with any Sections of these Regulations which are deemed necessary, to assure the health and safety of SpPP pool bathers.

SECTION 26.12 PROCEDURE FOR ADMINISTRATIVE ACTION

26.1201 *Operating Without a Permit* - If a pool is found

operating without a valid permit, ~~as required by Section 26.204, the Division Director shall issue a written notice for order immediate closure. This notice shall be delivered to either the lifeguard/operator or the person in charge. This closure shall be effective upon delivery receipt of the a written notice by the person in charge of the pool, and a closure notice statement on the sanitary survey report constitutes a written notice. A sign stating that the pool is closed may be posted at the bather entry point(s) and this sign shall be removed only by, or with the consent of the Director. Within five (5) days of receipt of this closure notice, The person in charge may request a hearing before the Director. If a hearing is requested, it shall be scheduled within ten (10) days. At least five (5) days prior to hearing, the person in charge shall be notified of the date, time and place. The pool shall remain closed until submission, review and approval of plans, followed by a sanitary survey confirming compliance with these Regulations and issuance of an operating permit. A conspicuous, colored placard shall be prominently displayed at all entrances of the pool which has failed to obtain a valid permit. If plans and specifications for the pool have been previously approved by the Division, the pool may reopen when approval of the Director has been granted and a permit has been issued. If there is not record of a Certificate of Approval, plans and specification shall be submitted in accordance with Section 26.202.~~

26.1202 *Suspension of a Permit* - If ~~some~~ conditions exist at a pool that represent an immediate imminent health hazard ~~to the public~~, the Director Division may suspend the operating permit and order immediate closure and issue a written notice for immediate closure, without a hearing upon written notice for a period not to exceed ten (10) fifteen (15) days. This notice shall be delivered to either the lifeguard/operator or the person in charge. The suspension shall be effective upon delivery receipt of written the notice by the person in charge and a closure notice suspension statement on the sanitary survey report constitutes a written notice. The person in charge shall yield the permit to the Division. This written notice shall state the reason(s) for the suspension/closure and the person in charge shall be requested to yield the permit to the Director. A sign stating that the pool is closed may be posted at the bather entry point(s) and this sign shall be removed only by, or with the consent of the Director. A suspension/closure notice shall be issued for any of the following conditions:*

- a. The clarity of the water is not in compliance with the provisions of Section 26.603.
- b. The bacteriological quality of the pool water is not in compliance with the provisions of Section 26.604.
- c. The pH of the pool water is less than 7.2 or greater than 7.8.
- d. The automatic disinfection system is not functioning properly, or, there is no automatic disinfection system or disinfectant present.

- e. The free chlorine residual is less than the level specified in Section 26.606.
- f. The bromine residual is less than the level specified in Section 26.606.
- g. The cyanuric acid level is greater than one hundred (100) ppm.
- h. The recirculation pump is not operating or not present.
- i. The filter is not operating or not present.
- j. There is no qualified lifeguard or attendant on duty (unless exempted by 16 Delaware Code).
- k. The water temperature exceeds 104°F in a spa pool.
 - l. There is a bare electrical wire or other obvious electrical hazard present.
 - m. The lighting is not in compliance with the provisions of Section 26.310 and because of this, the following are not clearly visible without glare from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field and placed on the bottom at the deepest point.
 - n. A bottom drain cover/grate is missing, broken, or not properly secured.
 - o. An authorized representative of the Division is denied immediate access to the pool pursuant to Section 26.207.
 - p. Fecal material is discharged into the pool water. (NOTE-Contact the Division for the current procedure for handling fecal contamination).
 - q. The facility fails to provide an approved pool operator pursuant to Section 26.205.
 - r. There is any other condition, or combination of conditions which may endanger the health, safety, or welfare of the bathers.

*If the person in charge, the pool operator or the lifeguard/attendant determines that any of the above conditions exist, they shall immediately close the pool. The Division shall be notified of the closure and the pool shall remain closed until the condition is satisfactorily corrected.

Within five (5) days of receipt of a suspension notice, The person in charge of the pool may request in writing, to the Division at any time during the suspension, a sanitary survey for the purpose of showing that the imminent health hazard no longer exists. The person in charge of the pool may also request, in writing, to the Division at any time during the suspension, an administrative hearing to challenge the findings of the sanitary survey that resulted in the pool closure. When the Division determines that the imminent health hazard no longer exists, the suspension shall be terminated and the permit returned. If the Division determines that the imminent health hazard has not been corrected and that the hazard still exists, the suspension remains in force pending a hearing and the Division may recommend that the permit be revoked. a hearing before the

Director for the purpose of demonstrating that the imminent public health hazard no longer exists. If a hearing is requested, it shall be scheduled within ten (10) days. At least five (5) days prior to the hearing, the person in charge shall be notified of the date, time and place. After the hearing, if the Director determines that the public health hazard no longer exists, the suspension shall be immediately lifted. If, however, the Director determines that the public health hazard still exists, the suspension shall continue, and the Director may recommend that the permit be revoked. The person in charge may appeal the decision of the Director to the Secretary, DHSS. However, any such appeal does not stay the decision. This appeal must be in writing and must be filed with the offices of the Secretary, DHSS, in Dover, Delaware within ten (10) days of the Director's decision. The Secretary, DHSS, shall hear this appeal at the earliest opportunity.

26.1203 Administrative Hearings for Serious Violations and Repeat Violations - If any condition listed in Section 26.1202 is not corrected within fifteen (15) days or if there are repeated violations of any provision of these Regulations, the person in charge of the pool requests a hearing pursuant to 26.1202, the Division Director shall schedule an administrative hearing within ten (10) days of the request of such a determination. The purpose of the hearing is to determine if the suspension should be lifted. At least five (5) days prior to the hearing, the person in charge of the pool shall be notified of the date, time, place, and the specific reason(s) for the hearing. After this hearing the Director may establish a compliance schedule, suspend the permit for a period not to exceed ninety (90) days or may recommend revocation of the permit. Failure of the person in charge to be present for an administrative hearing shall result in automatic suspension of the permit and recommendation for revocation to the Secretary, DHSS. The person in charge may appeal the decision of the Director to the Secretary, DHSS. However, any such appeal does not stay the decision. This appeal must be in writing and must be filed with the office of the Secretary, DHSS in Dover, Delaware within ten (10) days of the Director's decision. The Secretary, DHSS shall hear this appeal at the earliest opportunity.

26.1204 Serious Violations, Repeat Violations and General Unsanitary Conditions - If serious violations, repeat violations, or general unsanitary conditions exist, the Division may issue and properly serve due notice, by certified mail or by hand delivery, of the intention of the Division to suspend or revoke the permit of a pool. The Division shall, not suspend or revoke a permit of a pool for serious or repeated violations that do not present an imminent health hazard, without having first issued and properly served such notice of intent to suspend or revoke. Within thirty (30) days of the date of such notice of intent to suspend or revoke, the permit holder may submit to the

Division a written request for an administrative hearing. The suspension or revocation shall commence upon expiration of the notice of intent, unless within thirty (30) days of the date of such notice, the Division receives from the permit holder a written request for an administrative hearing. If the permit holder makes a timely request for an administrative hearing, the suspension or revocation shall be stayed pending the results of the hearing. A conspicuous, colored placard shall be prominently displayed at all entrances of a pool whose permit stands suspended or revoked.

26.1205 Pool Permit Holder Right to an Administrative Hearing - Upon due notice that the Division intends to suspend or revoke the permit of a pool as indicated in 26.1204, or for other reasons to protect public health, the permit holder may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing. When an administrative hearing is scheduled, the permit holder of the pool shall be informed at least five (5) days prior to the hearing of the place, time and date of the hearing and the specific charges against the pool. Notification of the hearing shall be by certified mail or by hand delivery. Failure of the permit holder to be present for an administrative hearing shall result in automatic suspension of the permit and recommendation for revocation.

26.1206 Records of Administrative Hearings - Records shall be made of all hearing proceedings and shall become documents of record. A written report of the hearing decision shall be furnished by the Division to the permit holder of the pool to the Secretary, DHSS, the Office of Health Systems Protection and the person in charge of the pool within ten (10) days following the hearing.

26.1207 Reapplication After Revocation - The person in charge of a pool may make written application for a new permit ninety (90) days after the revocation of a permit has become final.

SECTION 26.13 ENFORCEMENT AND INTERPRETATION

No provisions of Sections 26.3, 26.4, 26.5, 26.8, 26.9, 26.10 of these Regulations shall be applied retroactively, or interpreted to require reconstruction, alteration or replacement of a pool, or any part of a pool, which has been approved by the Division and which has been installed or is under construction. If, however, a pool or any part of a pool is reconstructed, altered or replaced, or if a private pool is converted to a public pool after the effective date of these Regulations, this conversion, reconstruction, alteration or replacement shall meet all of the provisions of these Regulations.

SECTION 26.14 PENALTY

Any person who neglects or fails to comply with the requirements of these Regulations shall be subject to the

provisions of penalty as provided in 16 Delaware Code Section 107, and shall be fined not less than \$100 and not more than \$1000, together with the costs, unless otherwise provided by law.

SECTION 26.15 REPEAL, DATE OF EFFECT AND AMENDMENTS

All regulations or parts of Regulations in conflict with these Regulations are hereby repealed, and these Regulations shall be in full force and effect on the date of adoption by the Secretary, DHSS. The Secretary, DHSS, may propose changes to the Regulations herein established and shall hold at least one public hearing on the proposed changes. At least thirty (30) days in advance of the public hearing, notice of proposed changes shall be published in at least two newspapers of general circulation in the State. Notice shall include a brief synopsis of the changes to be made, information on when and where the proposed changes may be reviewed by the public, the procedure for submitting comments, and the time, date and location of the public hearing. A hearing officer shall be appointed by the Secretary, DHSS, and a record shall be kept of the hearing.

SECTION 26.16 SEPARABILITY

If any provision of these Regulations should be declared invalid for any reason, the decision shall not affect the remaining provisions, which shall remain in full force and effect, and to this end, the provisions of the Regulations are hereby declared separable.

APPENDIX A

All chemicals in pool water affect the tendency of the water to be corrosive or to deposit a calcium carbonate scale. It is possible to control these two (2) conditions through the use of the Langelier Index (L.I). The index was developed in 1936 by Professor W. F. Langelier at the University of California (Berkeley). It expresses the relationship between pH, alkalinity, calcium hardness and temperature. The resulting number (formula method - below) or position on the nomograph (nomograph method - Appendix B) indicates whether the pool water is chemically "balanced." In theory, pool water that is "balanced" will neither corrode nor deposit a scale.

**LANGELIER INDEX/WATER BALANCE
FORMULA METHOD**

"Balanced" pool water has an L.I. between -0.3 and +0.3. An L.I. that is greater negatively than -0.3 indicates a corrosive water and an L.I. greater than +0.3 indicates a water that will deposit scale. After determining the pool water pH, alkalinity, calcium hardness and temperature, find the alkalinity factor (AF), calcium hardness factor (CHF)

and temperature factor (TF) using the table below. Use the pH and these three (3) factors in the following equation:

$$L.I. = pH + AF + CHF + TF - 12.1$$

FACTORS NECESSARY TO CALCULATE THE L.I.

<u>Alkalinity</u> <u>Factor</u> <u>Calcium</u>	<u>Hardness</u> <u>Factor</u>	<u>Temp. (°F)</u> <u>Factor</u>
5 ppm	0.7	32
25 ppm	1.4	37
50 ppm	1.7	46
75 ppm	1.9	53
100 ppm	2.0	60
150 ppm	2.2	66
200 ppm	2.3	76
300 ppm	2.5	84
400 ppm	2.6	94
800 ppm	2.9	104

SAMPLE PROBLEM

A pool water has the following characteristics: pH-7.4; alkalinity-50; calcium hardness-50 ppm; temperature-78°F. Using the tables above, the factors are 1.7 for alkalinity, 1.3 for calcium hardness; and 0.6 for temperature. Using the formula:

$$L.I. - 7.4 + 1.7 + 1.3 = 0.6 - 12.1 + -1.1$$

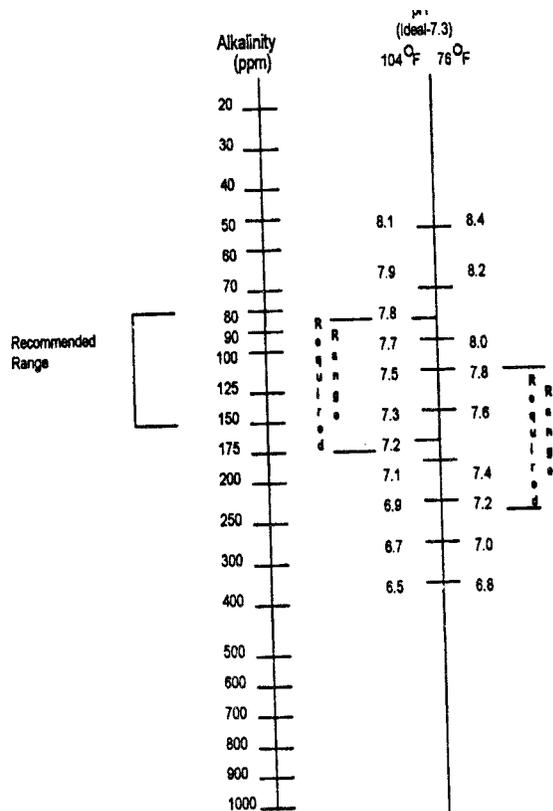
This pool water is not balanced and is corrosive. The pH is within the required range and almost ideal, however, the alkalinity and calcium hardness should be much higher (see Appendix B). Alkalinity can be raised by adding sodium bicarbonate (baking soda) and lowered by adding muriatic acid or sodium bisulfate (dry acid). Calcium hardness can be raised by adding calcium chloride but can only be lowered by replacing part or all of the pool water with lower calcium hardness water.

APPENDIX B

**LANGELIER INDEX/WATER BALANCE
NOMOGRAPH METHOD**

Measure the pool water pH, alkalinity and calcium hardness. The pH must be 7.2 - 7.8 pH can be raised by adding sodium carbonate (soda ash) and can be lowered by adding carbon dioxide (CO₂), muriatic acid or sodium bisulfate (dry acid). Using the 104°F pH scale for spa pools and the 76°F pH scale for other pools, use a straight edge to line up the pH and alkalinity readings. The point where this extended line intersects the calcium hardness line is the level

of calcium hardness needed for the water to be balanced. Do the same for pH and calcium hardness to get the alkalinity level needed for balance. The alkalinity and calcium hardness levels needed should be within the recommended ranges. Alkalinity can be raised by adding sodium bicarbonate (baking soda) and lowered by adding muriatic acid or sodium bisulfate (dry acid). Calcium hardness can be raised by adding calcium chloride but can only be lowered by replacing part or all of the pool water with lower calcium hardness water.



DEPARTMENT OF INSURANCE

18 DE Admin. Code 906

Statutory Authority: 18 Delaware Code,
Sections 311, 2501, 2304(15)(c), and 2312 (18
Del. C. §§ 311, 2501, 2304(15)(c), and 2312)

ORDER

Public hearings were held on January 13, 17, 24 and 29 and April 22, 2003 to receive comments on proposed Regulation 906 (formerly numbered as Regulation 87) relating to the use of credit scoring or personal credit

information by insurers selling personal lines of automobile and homeowners insurance in the State of Delaware. By my order of January 8, 2003, F.L. Peter Stone, Deputy Insurance Commissioner, was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearings and publication of proposed Regulation 906 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

Summary Of The Evidence And The Information Submitted

The summary of the evidence and the information submitted as set forth in the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated May 14, 2003 is incorporated into this Order. Michael J. Rich, Deputy Attorney General, acted as counsel for the Delaware Insurance Department. Thirty-one documents were admitted into evidence as exhibits over the course of five separate hearing days. At least eighty persons attended the hearings (some attending more than once). The people in attendance represented a cross-section of insurance company representatives, insurance trade representatives, agents, and consumers. The persons testifying and the documents submitted on behalf of the insurance industry were generally supportive of the regulation and the need for regulatory standards. Most consumers opposed the use of credit scoring by insurance companies. However, given the widespread use of credit scoring in all other states and the District of Columbia except for Maryland and Hawaii, most consumers argued alternatively for control over the use of credit scoring. From the time the proposed regulation was first published on November 1, 2002 for public comment, there has been a significant amount of written comment received by the Department. Most of the comment has been favorable for regulatory control generally and in support of the proposed regulation in particular.

Findings Of Fact With Respect To The Evidence And Information

I find that the hearing officer's FINDINGS OF FACT are well grounded in the record and are incorporated into this order. I further find that his proposed changes to the regulation as published on April 1, 2003 are technical and non-substantive. The proposed changes are designed to improve the clarity of the regulation and promote uniform interpretation of its terms and are such that re-publication is not required under 29 *Del. C.* § 10113(b)(4).

With respect to the specific changes proposed by the hearing officer I find as follows:

1. The change to Section 4.1.6 clarifies the regulation's definition of adverse action and provides that a

negative change to a person's premium is not an adverse action if it is unrelated to that person's credit history. Likewise, it is not an adverse action if there is a renewal with no change in tier, no change in premium or no re-scoring of the consumer report.

2. Section 5.1 has been modified by substituting the word "disability" for the word "handicap" to reflect terminology preferred by the various State councils and offices that represent the interests of Delaware's disabled citizens.

3. The change to Section 5.1 clarifies the terms under which an insurer must apply the two year limit on the use of credit information. The regulation does not require the insurer to obtain credit reports subsequent to the date of first use if, as a matter of policy, practice or underwriting, the insurer determines that subsequent to the first use of a credit report, consumer reports or credit score information will not be utilized in any decisions to renew or cancel the policy in the future.

4. The use of credit scores for persons other than the named insured is a matter of significant concern. The concept contained in Section 5.4 has been part of the proposed regulation from the first date of publication. The revision to that section clarifies, with respect to homeowners insurance, that a spouse who has no title or ownership interest in the property to be insured and is not a named policyholder or applicant, should not subject the owner of the property to a higher premium or less preferential tier merely because of the non-owner's credit score.

5. The changes to Section 7.3 clarify the manner in which an insurer is required to extraordinary personal circumstances justifying relief from the possible harsh effects of credit scoring and to allow the insurer to further define other situations as extraordinary personal circumstances. It also requires the consumer to request such treatment in writing. The section is also further clarified by not binding the insurer to review repeated requests or events previously determined either to be or not to be extraordinary personal circumstance. Section 7.3.4 has been added to provide that an insurer will not be out of compliance with any law or rule relating to underwriting, rating or rate filing if it grants an exception to the use of its policy of credit scoring under Section 7.3.

6. The change to Section 9 to add confidentiality to a third party in addition to the insurer with respect to information submitted to the Commissioner clarifies the intent to provide full confidentiality for proprietary and trade secret information for the insurer and any vendor under contract with an insurer. For non-regulated entities that provide credit scoring related services to an insurer, the protection of their proprietary and trade secret rights was never intended to be abrogated by the proposed regulation. The addition of the term "third parties" to the confidentiality provisions does not constitute a substantive change to the

regulation.

Decision And Effective Date

I hereby adopt Regulation 906 as modified by the changes approved above and as incorporated in the copy of the proposed attached hereto to be effective on September 1, 2003.

Text And Citation

The text of proposed Regulation 906 appears in the Register of Regulations Vol. 6, Issue 10, pages 1309 *et seq.*, April 1, 2003 subject to the modifications approved hereby.

DATED: May 13, 2003 Donna Lee H. Williams
Insurance Commissioner

Regulation No. 87 906 Use Of Credit Information

1.0 Authority

1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 *Del. C.* §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

2.0 Scope

2.1 This regulation shall apply to all insurers offering automobile, ~~property, surety and/or casualty insurance~~ motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.

3.0 Purpose

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that consumers, whether on initial application or renewal, are given notice when ~~credit~~ consumer reports will be requested and reviewed in connection with a consumer's eligibility for and/or the continuance of insurance coverage and/or a consumer's tier or level of premium payment.

3.4 To prohibit the practice of assigning a consumer to a premium level based solely on the consumer's credit rating or credit score.

~~3.5 To assure that, if used, credit information obtained by the insurer shall be utilized consistently within the insurer's book of business even though one or more affiliated companies may decline to use credit information or to utilize credit scoring as a factor in its rate making.~~

3.6 To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

4.0 Definitions

4.1 "Adverse action" has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as "the FCRA"). An adverse action includes but is not limited to the following:

4.1.1 Cancellation, denial or nonrenewal of insurance coverage;

4.1.2 Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:

4.1.2.1 application of a rating rule;

4.1.2.2 assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or

~~4.1.2.3 placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or~~

4.1.3 A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

4.1.3.1 coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

4.1.3.2 the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

4.14 The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.

4.1.45 Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of

the credit consumer report.

[4.1.6 Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.]

4.2 "Commissioner" shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

4.3 "Credit Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the ~~Federal Fair Credit Reporting Act [FCRA]~~) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for person, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

4.4 "Credit score" means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's credit consumer report created by an insurer or any person, firm or entity for use by an insurer.

4.5 "Document" or "public record" shall have the same meaning as described in 29 *Del. C.* § 10002(d) and 18 *Del. C.* §§ 320, 321.

4.6 "Insurance score" shall have the same meaning as "credit score."

4.7 "Insured," "policyholder" or "consumer" shall mean the applicant(s) for coverage or ~~named policyholder who shall have an insurable interest in the property to be covered as defined by 18 *Del. C.* § 2706.~~

Drafting Note: A spouse of an insured who has no title interest and/or who has not co-signed a note and/or mortgage for the real property to be insured does not have an insurable interest in the real property to be [insured.] person or persons insured under a policy of insurance but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

5.0 Prohibited Practices

5.1 No individual credit consumer report or credit score shall be valid ~~or~~ if the age of the report is greater than two years from the date of its first use for an individual application or renewal of coverage utilized if it is based or utilizes in any manner, factors which include any or all of

race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical ~~[handicap disability]~~, or any similar category prohibited by federal or state law.

~~5.2 Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 Del. C. Chapter 25, No insurer shall utilize a credit report or score as part of its rating or underwriting criteria unless it shall have first obtained authority to do so as part of its rate filing and shall have filed such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine that the use of such credit report or score shall not:~~

~~5.2.1 ~~†~~ Unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or~~

~~5.2.2 ~~‡~~ Be the sole basis upon which the insurer denies coverage, assigns the consumer to a more expensive premium class or tier and/or refuses to renew consumer's insurance coverage or upon which the insurer cancels, refuses to renew or sets a premium or rate for insurance coverage without consideration of other underwriting or rating factors.~~

5.3 No insurer shall be permitted to use the services of a third party to develop a credit consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the credit consumer report or score of any person other than the named policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner's coverage, no insurer shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to a current or prospective policyholder based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named policyholder or applicant.

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law be permitted to obtain credit information about any current or prospective policyholder except as may be expressly permitted by the laws of the United States or the State of Delaware.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 140 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

~~5.7 No insurer shall be permitted to penalize, impose a higher rate or take any action adverse or detrimental to a current or prospective policyholder because such person shall or may have refused to authorize the release of credit information or may have an unacceptable number of credit inquiries. The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:~~

~~5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;~~

~~5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;~~

~~5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;~~

~~5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.~~

~~5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.~~

~~5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.~~

~~5.8 If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a~~

premium or rate, or underwriting an insurance policy, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner. ~~No insurer shall be permitted to penalize, impose a higher rate or take any action adverse or detrimental to a current or prospective policyholder because such person shall have no credit history or a credit history that has insufficient activity upon which to calculate a credit score.~~

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.

6.0 Written Notice to Consumers

~~6.1 No denial of an application or refusal to issue insurance based on credit scoring or information contained in a consumer's credit report shall be valid unless, in addition to any other requirements that may apply, the insurer includes on the face of the application the following statement or a statement substantially similar to it in boldface type in a font no smaller than the regular text of the notice: "This application may be denied based on information contained in a credit report relating to you and/or someone else who resides in your household."~~

~~6.2 No refusal to renew or cancellation of insurance based on credit scoring or information contained in an insured's credit report shall be valid unless, in addition to any other requirements that may apply, the insurer includes in the notice of intent not to renew the following statement or a statement substantially similar to it in boldface type in a font no smaller than the regular text of the notice: "This (nonrenewal)(cancellation) is based on information contained in a credit report relating to you and/or someone else who resides in your household." If an insurer uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information on the consumer, other persons residing in the consumer's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit)(insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit)(insurance) score."~~

6.2 A notice denying an application for insurance or a notice refusing to renew or cancel insurance shall, to the

extent that the insurer's action is based on information contained in a consumer report relating to the applicant, insured and/or other named person, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the consumer's credit history or to the credit factors of the credit score. The reasons need not exceed four, ~~shall be in the order of decreasing importance,~~ shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that a consumer of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant or insured that, if the insured wishes to inquire further about the credit information on which the refusal, denial or nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than ~~ten~~ thirty days after the date on which the notice of refusal, denial or nonrenewal was mailed to the insured.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant or insured the specific reasons why the adverse action was taken.

6.3 If the applicant or insured submits ~~such~~ the written notification required under section 6.2.3, the refusal, denial or nonrenewal shall not become effective until thirty days after the accuracy of the credit information, which the applicant or insured has questioned and on which the refusal, denial or nonrenewal was based, has been verified and communicated to the applicant or insured. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant or insured has questioned and on which the refusal, denial or nonrenewal was based. The applicant or insured must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant or insured. If the applicant or insured

fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant or insured, terminate such investigation and may refuse; to insure the applicant or cancel deny or nonrenew the policy.

6.5 6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain a new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

7.0 Corrections or Changes to a Consumer's Credit Score

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the ~~mistaken~~ prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

~~[7.3 An insured or an applicant for insurance shall have a right to seek review by the insurer of its use of a credit score in the event an insured's or applicant's consumer report is adversely affected by extraordinary personal circumstances. Such extraordinary personal circumstances may include by way of example and not of limitation, serious illness, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may require that an insured or applicant provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance. An insurer may elect to eliminate the credit score from consideration~~

~~in such instance and rely its other underwriting and rating guidelines or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.~~

7.3 An insured or an applicant for insurance, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event an insured's or applicant's consumer report is adversely affected by extraordinary personal circumstances.

7.3.1 Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.

7.3.2 An insurer may require that an insured or applicant provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.

7.3.3 An insurer may elect to eliminate the credit score from consideration in such instance and rely its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.

7.3.4 An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.]

8.0 General Business Practices

8.1 Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 *Del. C.* Chapter 25.

8.2 No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 *Del. C.* Chapter 25. Policies and renewal notices issued on or before the effective date of this regulation in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.

8.3 No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 *Del. C.* Chapter 25.

8.4 ~~Affiliated companies may make independent decisions with respect to the use of credit information or credit scores, but any insurer or insurance company, or affiliate thereof, having elected to use such information shall apply the information uniformly and consistently within the company's book of business. When an insurer denies or fails to renew a policy, evidence of the notice of denial or nonrenewal shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the insured shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the insured.~~

8.5 ~~Any insurer that requests or utilizes credit reports in consideration of an application for personal lines automobile or homeowners insurance shall maintain evidence of its compliance in its regular business files at its principal place of business. Such evidence need not be in any particular form, so long as it is sufficient to reasonably demonstrate compliance. Such evidence shall be made available for review and examination by the Commissioner. When an insurer denies or fails to renew a policy, evidence of the notice of denial or nonrenewal shall be retained by the insurer, and a record of the contents of the credit report shall be maintained by the insurer or pursuant to the insurer's agreement with the consumer reporting agency for a sufficient time to be available during the next market conduct examination by the Commissioner. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.~~

9.0 Confidentiality

~~[9.1]~~ Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret a public document and subject to the confidentiality provisions of 18 Del. C. § 321(g) and/or, upon the request of the insurer or owner of the document, 29 Del. C. § 10002(d)(2). Where an insurer [or third party] is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer [or third party] may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container.

Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer [or third party] notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

10.0 Severability

10.1 If any provision of this Regulation or the application of any such provision to and person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

11.0 Causes of Action and Defenses

11.1 This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 *Del. C.* § 2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* § 2304(15)(c).

12.0 Effective Date

12.1 This regulation shall become effective on September 1, 2003 30 days after publication in the *Delaware Register of Regulations*.

ADOPTED AND SIGNED BY THE COMMISSIONER

Donna Lee H. Williams
May 13, 2003

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**
Statutory Authority: 7 Delaware Code, Chapter 60
(7 Del.C. Ch. 60)

**Secretary's Order No.: 2003-A-0029
Proposed Adoption of Subpart B
into Regulation No. 38,
"Emission Standards for Hazardous Air Pollutants
for Source Categories"**

Date of Issuance: May 15, 2003
Effective Date of the Amendment: June 11, 2003

I. Background

On March 24, 2003 a public hearing was held in the DNREC Auditorium in Dover to receive comment on the proposed adoption of Subpart B into Regulation No. 38 in order to address upcoming changes to the Federal requirements that implement Section 112(j) of the Clean Air Act. Delaware is proposing the adoption of Subpart B into the aforementioned Regulation as part of its requirements to maintain equivalency with its program authorization and equivalency with EPA's air toxics program.

Prior to this public hearing, the proposed changes to Regulation 38 were formally proposed in the Delaware Register of Regulations on March 1, 2003, and were also discussed in two public workshops, held on March 5, 2003 and March 7, 2003. Following the March 5, 2003 public workshop, several changes were suggested to the draft language of this proposed amendment. While the changes are not substantive in nature, the Department does agree that they provide greater clarity and consistency, and therefore said changes have now been reflected in the proposed regulatory amendment regarding the proposed adoption of Subpart B.

It was also noted by the Department at the public hearing that on April 25, 2002 the Sierra Club took exception with some of these proposed changes to the Federal requirements under Section 112 (j), and filed suit against the U.S. E.P.A. in the U.S. Court of Appeals for the District of Columbia. The highlights of this legal action taken by the Sierra Club against the U.S. E.P.A. concerning these Federal requirements, and the impact of the eventual settlement agreement concerning that lawsuit upon Delaware's air regulations, were discussed at greater length in the Hearing Officer's Memorandum, which is expressly incorporated herein by reference. Proper notice of the

hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated May 5, 2003. Again, that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated May 5, 2003 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that Subpart "B" of the State of Delaware's Regulation No. 38 be adopted in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to Subpart "B" of Delaware's Regulation No. 38 will further the policies and purposes of 7 Del. C. Chapter 60. Furthermore, this rulemaking will also permit the State of Delaware to be in compliance with the EPA's Federal Regulations with respect to Section 112(j) of the Clean Air Act, and will thereby help Delaware to maintain equivalency with its program authorization and equivalency with EPA's air toxics program.

John A. Hughes, Secretary

Final Proposed Amendment to Subpart B under SAN 2003-01

REGULATION NO. 38 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

[5 6/11/023]

Subpart B Requirements for Case-By-Case Control
Technology Determinations for Major Sources

5/11/02

OVERVIEW OF SUBPART B

Subpart B of Regulation No. 38 consists of two separate sets of requirements. One set of requirements, which are included in Sections 63.40 through 44, implement the

section 112(g)(2)(B) provisions of the Clean Air Act. These requirements apply to owners or operators who construct or reconstruct a major source of hazardous air pollutants after June 29, 1998. The Department adopted these requirements into Regulation No. 38 in Apr. 1998.

The other set of requirements, which are included Sections 63.50 through 56, implement the section 112(j) provisions of the Clean Air Act. These requirements apply to owners or operators of any collection of equipment defined in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline and the collection of equipment is located at a source that is subject to Regulation 30.

Sections 63.45 through 49 of this subpart have been reserved.

[4/22/98 6/11/03]

Section 112(g)(2)(B) Requirements

The provisions of Sections 63.40 through 63.44 in Subpart B, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) "Regulation 30" shall replace "title V" wherever it appears.

(b) Paragraph 63.40(b) shall be replaced with the following language: "The requirements of Secs. 63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998 unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) and incorporated in another subpart of part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998.

(c) The opening sentence of Section 63.41 shall be replaced with the following language: "Terms used in Secs. 63.40 through 63.44 that are not defined in this section have the meaning given to them in the Act and in subpart A of this regulation.

(d) The opening of the definition of Available information found in Section 63.41 shall be replaced with the following language: "*Available information* means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of issuance of the construction permit which incorporates the final and effective case-by-case MACT determination:".

(e) The following errata found in Section 63.41 as published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) "for" in definition (3) of Available information

shall be replaced with "from";

(ii) HAP's" in definition of Construct a major source shall be replaced with "HAP";

(iii) "suite" in definition of Greenfield suite shall be replaced with "site";

(iv) deduction" in definition of Maximum achievable control technology (MACT) emission limitation for new sources shall be replaced with "reduction"; and

(v) "that potential" in definition of Reconstruct a major source shall be replaced with "the potential".

(f) "Administrator" in the definition of Available information found in Section 63.41 shall be replaced with "Administrator or Department."

(g) Paragraph (2)(ii)(A) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER) under Regulation 25 of the State of Delaware "Regulations Governing the Control of Air Pollution" for those HAP to be emitted by the process or production unit; or".

(h) Paragraph (2)(ii)(B) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);".

(i) Paragraph (2)(iv) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;".

(j) Paragraph (2)(v) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and".

(k) Paragraph (2)(vi) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations are made by the permitting authority are applicable requirements under section 504(a) of the Act and under Section 6 of Regulation 30 of the State of

Delaware "Regulations Governing the Control of Air Pollution" and either have been incorporated into any existing Regulation 30 permit for the affected facility or will be incorporated into such permit upon issuance or revision."

(l) The definition of Construction permit is added to the list of definitions found in Section 63.41 with the following language: "*Construction permit* means a construction permit issued pursuant to Regulation 2 and/or 25 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(m) The opening of the definition of Control technology found in Section 63.41 shall be replaced with the following language: "*Control technology* means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants in a way that would --".

(n) The definition of Effective date of section 112(g)(2)(B) in a State or local jurisdiction found in Section 63.41 shall be deleted.

(o) The definition of Electric utility steam generating unit found in Section 63.41 shall be replaced with the following language: "*Electric utility steam generating unit* means any fossil fuel fired combustion unit that serves a generator with a nameplate capacity of more than 25 megawatts that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its nameplate electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit."

(p) The definition of HAP is added to the list of definitions found in Section 63.41 with the following language: "*HAP* means a hazardous air pollutant (i.e., any chemical listed in or pursuant to section 112(b) of the Act)."

(q) The definition of Notice of MACT Approval found in Section 63.41 shall be deleted.

(r) The definition of Permitting authority found in Section 63.41 shall be replaced with the following language: "*Permitting authority* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended."

(s) The entire content of Paragraph 63.42(a) as promulgated shall be deleted and its heading shall be replaced with the following language: "(a) [Reserved]."

(t) The entire content of Paragraph 63.42(b) as promulgated shall be deleted and its heading shall be replaced with the following language: "(b) [Reserved]."

(u) Paragraph 63.42(c) shall be replaced with the following language: "After June 29, 1998, no person may begin actual construction or reconstruction of a major source of HAP unless: "

(v) The following errata published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) "owner and operator" in paragraph 63.42(c)(1)

shall be replaced with "owner or operator";

(ii) "63" in paragraph 63.42(c)(1) shall be deleted; and

(iii) "the anticipated" in paragraph 63.43(e)(2)(v) shall be replaced with "The anticipated".

(w) Paragraph 63.42(c)(2) shall be replaced with the following language: "The permitting authority has issued a construction permit which incorporates a final and effective case-by-case determination pursuant to the provisions of Sec. 63.43; requiring the emissions from the constructed or reconstructed major source to be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources."

(x) Paragraph 63.43(b) shall be replaced with the following language: "When a case-by-case determination of MACT is required by Sec. 63.42(c), the owner ~~and or~~ operator shall obtain from the permitting authority an approved MACT determination pursuant to paragraph (c) of this section."

(y) Paragraph 63.43(c)(1) shall be replaced with the following language: "[Reserved]."

(z) Paragraph 63.43(c)(2) shall be replaced with the following language: "The owner or operator shall follow all procedures in Regulation 2 and/or 25, except that --".

(aa) Paragraph 63.43(c)(2)(i) shall be replaced with the following language: "the provisions of Section 2.2 of Regulation 2 do not apply to any owner or operator that is subject to the requirements of Secs. 63.40 through 63.44 and".

(bb) Paragraph 63.43(c)(2)(ii) shall be replaced with the following language: "in addition to the provisions of Section 11.10 of Regulation 2, the final MACT determination and the construction permit shall expire if construction or reconstruction has not commenced within 18 months of permit issuance. The owner or operator may request and the permitting authority may grant an extension which shall not exceed an additional 12 months."

(cc) Paragraph 63.43(c)(3) shall be replaced with the following language: "When desiring alternative operating scenarios, an owner or operator may request approval of case-by-case MACT determinations for each alternative operating scenario. Approval of such determinations satisfies the requirements of section 112(g) for each such scenario."

(dd) Paragraph 63.43(c)(4) shall be replaced with the following language: "The MACT emission limitation and requirements established in the approved construction permit shall be effective as required by paragraph (j) of this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in subpart A of this regulation."

(ee) The opening to Paragraph 63.43(d) shall be replaced with the following language: "The following general principles shall govern preparation by the owner or operator of each construction permit application requesting a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the permitting authority:".

(ff) Paragraph 63.43(e)(1) shall be replaced with the following language: "An application for a MACT determination shall be submitted at the same time as the construction permit application and shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section. At the time of submittal, the owner or operator shall request that the permit application be processed pursuant to Section 11.2 (i) or 11.2 (j) of Regulation 2, whichever is appropriate."

(gg) The opening to Paragraph 63.43(e)(2) shall be replaced with the following language: "In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:".

(hh) Paragraph 63.43(e)(2)(xiii) shall be replaced with the following language: "Any other relevant information required pursuant to subpart A of this regulation."

(ii) The opening to Paragraph 63.43(e)(3) shall be replaced with the following language: "In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:".

(jj) The entire content of Paragraph 63.43(f) as promulgated shall be deleted and its heading shall be replaced with the following language: "(f) [Reserved]."

(kk) The entire content of Paragraph 63.43(g) as promulgated shall be deleted and its heading shall be replaced with the following language: "(g) [Reserved]."

(ll) The entire content of Paragraph 63.43(h) as promulgated shall be deleted and its heading shall be replaced with the following language: "(h) [Reserved]."

(mm) Paragraph 63.43(i) shall be replaced with the following language: "The permitting authority shall send notice of any approvals pursuant to paragraph (c)(2) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States."

(nn) Paragraph 63.43(j) shall be replaced with the

following language: "The effective date of a MACT determination shall be the date the permitting authority issues the construction permit which incorporates the final and effective MACT determination."

(oo) Paragraph 63.43(l)(1) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the issued construction permit, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and record keeping requirements."

(pp) Paragraph 63.43(l)(2) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the issued construction permit. Any violation of such requirements by the owner or operator shall be deemed by the permitting authority and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act."

(qq) Paragraph 63.43(m) shall be replaced with the following language: "Within 60 days of the issuance of a construction permit, the permitting authority shall provide a copy of such permit to the Administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT data base."

(rr) The phrase "under any of the review options available" in paragraph 63.44(a) shall be deleted.

(ss) The phrase "40 CFR part 70 or part 71, whichever is relevant," in 63.44(b) shall be replaced with the following language: "Regulation 30."

Secs. 63.45 through 49 [Reserved].

~~5~~ 6/11/023

Section 112(j) Provisions

Sec. 63.50 Applicability.

(a) General applicability.

(1) The requirements of Secs. 63.50 through 56 of this subpart implement section 112(j) of the Act.

(2) The requirements of Secs. 63.50 through 56 of this subpart apply to owners or operators of affected 112(j) sources that are located at a major source that is subject to Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(3) The requirements of Secs. 63.50 through 56 of this subpart do not apply to research or laboratory activities as defined in Sec. 63.51 of this subpart.

(b) Relationship to other State and Federal requirements.

The requirements of Secs. 63.50 through 56 of this subpart are additional to all other applicable State and Federal requirements.

Sec. 63.51 Definitions.

Terms used in Secs. 63.50 through 56 of this subpart that are not defined in this section have the meaning given to them in the Act or in subpart A of this regulation.

Affected 112(j) source means the collection of equipment, activities or both within a single contiguous area and under common control that is in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under Secs. 63.50 through 56 of this subpart, any information contained in the following information sources as of issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart:

(1) A relevant proposed regulation, including all supporting information.

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed according to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS) including information in the MACT database.

(6) Any additional information that can be expeditiously provided by the Administrator or Department.

(7) Any information provided by applicants in a Part 3 MACT application, an application for a permit, permit modification or administrative amendment according to the requirements of Secs. 63.50 through 56 of this subpart.

(8) Any additional relevant information provided by the applicant or others prior to or during the public comment period for a final and legally effective case-by-case MACT determination for an affected or a new affected 112(j) source.

Control technology means measures, processes, methods, systems or techniques to limit the emission of hazardous air pollutants which:

(1) Reduce the quantity of, or eliminate emissions of,

such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice or operational standards; or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Equivalent emission limitation means an emission limitation, established under this subpart, which is equivalent to the MACT standard that the EPA would have promulgated under section 112(d) or (h) of the Act, had they done so by the section 112(j) deadline.

Existing source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, reflecting the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reductions and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies. These requirements shall be based upon available information and shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Department and/or Administrator has emissions information), excluding those sources that have, within 18 months before the Department issues a final and legally effective MACT determination under this subpart, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category, for categories of stationary sources with 30 or more sources, or

(ii) The average emission limitation achieved by the best performing five sources (for which the Department and/or Administrator has emissions information) in the category, for categories with fewer than 30 sources.

(2) For new sources, the emission limitation achieved in practice by the best controlled source in the section 112(c) source category, where such source is equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration

of emissions, is substantially equivalent to the new affected 112(j) source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected 112(j) source.

New affected 112(j) source means the collection of equipment, activities or both, that if constructed after the issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart, is subject to the applicable new source MACT requirements. According to paragraph 63.52(f)(3)(i) of this subpart, each permit shall define the term "new affected 112(j) source," which will be the same as the "affected 112(j) source" unless a different collection is warranted based on consideration of factors including:

- (1) Emission reduction impacts of controlling individual sources versus groups of sources;
- (2) Cost effectiveness of controlling individual equipment;
- (3) Flexibility to accommodate common control strategies;
- (4) Cost/benefits of emissions averaging;
- (5) Incentives for pollution prevention;
- (6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);
- (7) Feasibility and cost of monitoring; and
- (8) Other relevant factors.

New source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, which shall be based upon available information and shall not be less stringent than the MACT floor and which reflects the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies.

Research or laboratory activities means activities whose primary purpose is to conduct research and development into new processes and products; where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed according to section 112(c)(7) of the Act.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under 40 CFR part 63, except that for all major sources listed in those source categories scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996 and for all major sources listed in those source categories scheduled to be promulgated

by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Sec. 63.52 Approval process for new and existing affected 112(j) sources.

(a) Sources that are ~~major~~ affected 112(j) sources on the section 112(j) deadline.

(1) Except as provided for in paragraph 63.52(a)(2) of this section, the owner or operator of any source that is an ~~major~~ affected 112(j) source on the section 112(j) deadline shall comply with the following.

(i) Submit to the Department by the section 112(j) deadline:

(A) A Part 1 MACT application according to paragraph 63.53(a) of this subpart or

(B) If desired, a request for an applicability determination by the Department of whether a source is an ~~major~~ affected 112(j) source.

(ii) An owner or operator that submitted a timely request for an applicability determination in accordance ~~to~~ with paragraph (a)(1)(i)(B) of this section that did not receive ~~a determination a response from the Department~~ by May 11, 2003 shall submit the following:

(A) A Part 2 MACT application in accordance with paragraph (a)(1)(iii) of this section or

(B) If needed, a new request for an applicability determination not later than July 11, 2003. ~~The Any such~~ new request shall include the following:

(I) [Identification of ~~the~~ affected 112(j) source category for which the request is being made;

(II) [Description of ~~the~~ specific emission source(s) of concern;

(III) The specific language in the EPA proposed standard associated with each specified concern identified in paragraph (a)(1)(ii)(B)(II) of this section; and

(IV) Any additional information, as appropriate, that illustrates why a determination of applicability is still required.

(~~ii~~ iii) Submit to the Department a Part 2 MACT application according to paragraph 63.53(b) of this subpart not later than ~~24 months following~~ the applicable "Part 2 Due Date" listed in Table 52-1 of this section, unless the Administrator has promulgated the final rule for the applicable source category or subcategory on or before the applicable "Part 2 Due Date".

(A) ~~The~~ submittal of the Part 1 MACT application or

(B) ~~The receipt of the Department's positive applicability determination according to paragraph (d)(1) of this section.~~

(~~iii~~ iv) If desired, include with the Part 2 MACT application submitted according to paragraph (a)(1)(~~ii~~ iii) of this section, a Part 3 MACT application according to

paragraph 63.53(c) of this subpart.

(2) The owner or operator of any source that has received a final and legally effective case-by-case MACT determination under §section 112(g) according to Sec. 63.43 of this subpart on or before the section 112(j) deadline shall submit a Part 1 MACT application to the Department by the section 112(j) deadline.

(b) Sources that become ~~major~~ affected 112(j) sources after the section 112(j) deadline and that do not have a permit addressing the section 112(j) requirements.

(1) The owner or operator of any source shall comply with the paragraphs (b)(2) and (3) of this section, when section 112(g) requirements are not invoked and when that source would become an major affected 112(j) source due to:

(i) Construction, reconstruction or modification;

(ii) Relaxation of any state or federally enforceable permit limitation; or

(iii) The Department, under subpart A of this regulation, or the Administrator, under section 112(a)(1) of the Act, establishes a lesser quantity emission threshold that results in an ~~area affected 112(j)~~ source becoming an major affected 112(j) source.

(2) The owner or operator of any source identified in paragraph (b)(1) or (c)(2)(i) of this section shall submit the following to the Department:

(i) Part 1, Part 2 and Part 3 MACT applications according to paragraphs 63.53(a) through (c) of this subpart.

(ii) One of the following requests, as appropriate.

(A) A request that any associated Regulation 2 construction permit be processed according to paragraph 11.2(j) of Regulation 2.

(B) A request that the relaxation of any existing permit limitation specified in a Regulation 30 permit be processed as a significant permit modification.

(C) A request that the relaxation of any existing permit limitation specified in a Regulation 2 operating permit, where there is an associated pending initial Regulation 30 permit, be processed according to paragraph 11.2(j) of Regulation 2.

(3) Where the relaxation of any existing permit limitation specified in a Regulation 2 operating permit is requested, and there is not an associated Regulation 30 or pending initial Regulation 30 permit, operation as an ~~major~~ affected 112(j) source shall not commence until a Regulation 30 permit that addresses the section 112(j) requirements is issued by the Department.

(4) The owner or operator of any source that would become an major affected 112(j) source due to construction or reconstruction and section 112(g) requirements are invoked shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

Table 52-1 of Subpart B - Part 2 MACT Application Due Date for Applicable 112(j) Source Categories

<u>Affected 112(j) Source Category</u>	<u>Subpart</u>	<u>Part 2 Due Date</u>
<u>Flexible Polyurethane Foam Fabrication Operations</u>	<u>MMMMM</u>	<u>[May June 15, 2003]</u>
<u>Coke Ovens: Pushing, Quenching, and Battery Stacks</u>	<u>CCCCC</u>	<u>[May June 15, 2003]</u>
<u>Reinforced Plastic Composites Production</u>	<u>WWWWW</u>	<u>[May June 15, 2003]</u>
<u>Semiconductor Manufacturing</u>	<u>BBBBB</u>	<u>[May June 15, 2003]</u>
<u>Refractory Products Manufacturing (1)</u>	<u>SSSSS</u>	<u>[May June 15, 2003]</u>
<u>Brick and Structural Clay Products Manufacturing</u>	<u>JJJJJ</u>	<u>[May June 15, 2003]</u>
<u>Clay Ceramics Manufacturing (2)</u>	<u>KKKKK</u>	<u>[May June 15, 2003]</u>
<u>Asphalt Processing and Asphalt Roofing Manufacturing (3)</u>	<u>LLLLL</u>	<u>[May June 15, 2003]</u>
<u>Integrated Iron and Steel Manufacturing</u>	<u>FFFFF</u>	<u>[May June 15, 2003]</u>

<u>Hydrochloric Acid Production (Included Fume Silica Facilities) (4)</u>	<u>NNNNN</u>	<u>[May June 15, 2003]</u>
<u>Engine Test Cells/Stands (3)</u>	<u>PPPPP</u>	<u>[May June 15, 2003]</u>
<u>Surface Coating of Metal Furniture</u>	<u>RRRR</u>	<u>[May June 15, 2003]</u>
<u>Printing, Coating, and Dyeing of Fabrics and Other Textiles</u>	<u>OOOO</u>	<u>[May June 15, 2003]</u>
<u>Surface Coating of Wood Building Products</u>	<u>QQQQ</u>	<u>[May June 15, 2003]</u>
<u>Stationary Combustion Turbines</u>	<u>YYYY</u>	<u>Oct. 30, 2003</u>
<u>Lime Manufacturing Plants</u>	<u>AAAAA</u>	<u>Oct. 30, 2003</u>
<u>Site Remediation</u>	<u>GGGGG</u>	<u>Oct. 30, 2003</u>
<u>Iron and Steel Foundries</u>	<u>EEEE</u>	<u>Oct. 30, 2003</u>
<u>Taconite Iron Ore Processing</u>	<u>RRRRR</u>	<u>Oct. 30, 2003</u>
<u>Miscellaneous Organic Chemical Manufacturing & Miscellaneous Coating Manufacturing (5)</u>	<u>FFFF & HHHHH</u>	<u>Oct. 30, 2003</u>
<u>Organic Liquids Distribution (Non-Gasoline)</u>	<u>EEEE</u>	<u>Oct. 30, 2003</u>
<u>Primary Magnesium Refining</u>	<u>TTTTT</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Metal Cans</u>	<u>KKKK</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Plastic Parts and Products</u>	<u>PPPP</u>	<u>Oct. 30, 2003</u>
<u>Mercury Cell Chlor-Alkali Plants (Chlorine Production)</u>	<u>IIII</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Miscellaneous Metal Parts and Products (includes Asphalt/Coal Tar Coating of Metal Pipes) (3)</u>	<u>MMMM</u>	<u>Oct. 30, 2003</u>
<u>Industrial/Commercial/Institutional Boilers and Process Heaters (6)</u>	<u>DDDDD</u>	<u>Apr. 28, 2004</u>
<u>Plywood and Composite Wood Products</u>	<u>DDDD</u>	<u>Apr. 28, 2004</u>
<u>Stationary Reciprocating Internal Combustion Engines</u>	<u>ZZZZ</u>	<u>Apr. 28, 2004</u>
<u>Surface Coating of Automobiles and Light-Duty Trucks</u>	<u>III</u>	<u>Apr. 28, 2004</u>
<u>Industrial/Commercial/Institutional Boilers and Process Heaters (7)</u>		<u>Aug. 13, 2005</u>
<u>Hydrochloric Acid Production (8)</u>		<u>Aug. 13, 2005</u>

Notes

- (1) Includes Chromium Refractories Production.
- (2) Two subcategories of Clay Products Manufacturing.
- (3) Two source categories.
- (4) Includes all sources within the Hydrochloric Acid Production standard that burn no hazardous waste and all acid production sources at fume silica facilities.
- (5) Covers the 23 source categories listed in Table 52-2.
- (6) Includes all sources in the Industrial/Commercial/Institutional Boilers and Process Heaters standard that burn no hazardous waste.
- (7) Includes all sources in the Industrial/Commercial/Institutional Boilers and Process Heaters standard that burn hazardous waste.

(8) Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

Table 52-2 of Subpart B - Applicable 112(j) Subcategories under the Miscellaneous Organic Chemical Manufacturing & Miscellaneous Coating Manufacturing MACTs

Subcategories

Manufacture of Paints, Coatings, and Adhesives

Alkyd Resins Production

Maleic Anhydride Copolymers Production

Polyester Resins Production

Polymerized Vinylidene Chloride Production

Polymethyl Methacrylate Resins Production

Polyvinyl Acetate Emulsions Production

Polyvinyl Alcohol Production

Polyvinyl Butyral Production

Ammonium Sulfate Production--Caprolactam By-Product Plants

Quaternary Ammonium Compounds Production

Benzyltrimethylammonium Chloride Production

Carbonyl Sulfide Production

Chelating Agents Production

Chlorinated Paraffins Production

Ethylidene Norbornene Production

Explosives Production

Hydrazine Production

OBPA/1,3-Diisocyanate Production

Photographic Chemicals Production

Phthalate Plasticizers Production

Rubber Chemicals Manufacturing

Symmetrical Tetrachloropyridine Production

(c) Sources that have a permit addressing the section 112(j) requirements.

The requirements of paragraphs (c)(1) and (2) of this section apply to ~~major~~ affected 112(j) sources that have a permit addressing the section 112(j) requirements according to Secs. 63.50 through 56 of this subpart, but where changes to equipment, activities or both, subsequently, occur at the source.

(1) If the existing permit already provides the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, then that source shall comply with the applicable new source MACT requirements, and the section 112(j) requirements are thus satisfied.

(2) If the existing permit does not provide the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, the owner or operator shall comply with paragraph (c)(2)(i) or (ii) of this section, whichever appropriate.

(i) If section 112(g) requirements are not invoked, the owner or operator of that source shall

comply with the provisions of paragraph (b)(2) of this section.

(ii) If section 112(g) requirements are invoked, the owner or operator of that source shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(d) Applicability and equivalency determinations.

(1) Applicability Determinations.

(i) The Department shall review any request for an applicability determination when requested to do so according to paragraph (a)(1)(i)(B) of this section. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(~~ii~~ iii) and (~~iii~~ iv) of this section. If the Department's applicability determination is negative, no further action by the owner or operator is necessary.

(ii) The Department shall review any request for an applicability determination resubmitted in accordance with paragraph (a)(1)(ii)(B) of this section not later than September 10, 2003. If the Department's applicability determination is negative, no further action by the owner or operator is necessary. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(iii) and (iv) of this section.

(2) For any Part 1 application received pursuant to paragraph (a)(2) of this section, the Department shall review the final and legally effective case-by-case MACT determination approved according to Sec. 63.43 of this subpart. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are not substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall impose the requirements specified in paragraph (f)(3) of this section by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable.

(3) In issuing any final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart after the section 112(j) deadline (i.e., according to paragraph (b)(4) or (c)(2)(ii) of this

section), the Department shall specify in that determination that the associated emission limitations effectuate both section 112(g) and section 112(j) requirements.

(e) Completion determination and application shield.

(1) Within 60 days of the receipt of the Part 2 and/or Part 3 MACT application(s), the Department shall notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 and/or Part 3 MACT application(s) shall be deemed complete unless the Department notifies the owner or operator in writing within 60 days of the submittal that the application is incomplete.

(2) Following submittal of any application, the Department may request additional information from the owner or operator. The owner or operator shall respond to such requests in a timely manner.

(3) If the owner or operator has submitted timely and complete application(s) as required by this section, any failure to have a Regulation 30 permit addressing the section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once complete application(s) are submitted, the owner or operator shall not be in violation of the requirement to have a Regulation 30 permit addressing the section 112(j) requirements.

(f) Permit issuance and content.

(1) For each Part 2 application received according to paragraph (a) of this section, the Department shall reopen the source's Regulation 30 permit for cause according to the requirements of Regulation 30 and shall impose the requirements in paragraph (f)(3) of this section, as appropriate, through the Regulation 30 permit. If the Department has not yet issued a Regulation 30 permit, the Department shall revise the applicable Regulation 2 operating permit(s) using the procedures in paragraphs 12.4 through 12.6 of Regulation 2.

(2) For each Part 2 application received according to paragraph (b) or (c) of this section, the Department shall issue a Regulation 2 construction or operating permit using the procedures of paragraph 11.2(j) of Regulation 2, shall reopen the source's Regulation 30 permit for cause, shall revise the source's Regulation 30 permit as a significant permit revision or shall issue a Regulation 30 permit, as applicable, to impose the requirements in paragraph (f)(3) of this section, as appropriate.

(3) Permit requirements for affected 112(j) sources.

(i) Identification of the affected 112(j) source and the new affected 112(j) source.

(ii) An equivalent emission limitation established by the Department that reflects

existing source MACT requirements, for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iii) An equivalent emission limitation established by the Department that reflects new source MACT requirements for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iv) In lieu of paragraphs (f)(ii) and (f)(iii) of this section, any specific design, equipment, work practice or operational standard or combination thereof, when the Administrator or Department determines that hazardous air pollutants cannot be emitted through a conveyance designed and constructed to capture such pollutants, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(v) The appropriate provisions of subpart A of this regulation and the information specified in paragraphs (f)(3)(v)(A) through (C) of this section.

(A) Any additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(B) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with requirements established according to Regulation 30.

(C) Compliance dates by which the owner or operator shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(I) The owner or operator of an ~~major~~ affected 112(j) source subject to paragraphs (a), (b) or (c)(2) of this section shall comply with existing source MACT requirements by the date established in the source's Regulation 30 or Regulation 2 permit, as applicable. The compliance date shall not be later than 3 years after the issuance of the permit for that source, except where the Department issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act or unless otherwise specified in section 112(i).

(II) The owner or operator of a new affected 112(j) source subject to paragraph (c)(1) of this section shall comply with new source MACT requirements immediately upon startup of the new affected 112(j) source.

(g) Permit issuance dates.

The Department shall issue all permits that address the requirements of this subpart in accordance with the requirements of Regulation 2, 25, and/or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution", as is applicable.

(h) MACT emission limitations.

(1) Owners or operators of affected 112(j) sources subject to paragraph (a), (b) or (c)(2) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to affected 112(j) sources, including the compliance date for affected 112(j) sources established in paragraph (f)(3)(v)(C)(I) of this section.

(2) Owners or operators of new affected 112(j) sources subject to paragraph (c)(1) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to new affected 112(j) sources, including the compliance date for new affected 112(j) sources established in paragraph (f)(3)(v)(C)(II) of this section.

Sec. 63.53 Application content for case-by-case MACT determinations.

(a) Part 1 MACT Application.

The Part 1 application for a MACT determination shall contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of sources belonging to the relevant source category.

(4) An identification of any affected 112(j) sources for which an application has been made for a final and legally effective case-by-case MACT determination under section 112(g) according to Secs. 63.40 through 44 of this subpart.

(b) Part 2 MACT Application.

The Part 2 application for a MACT determination shall contain the information in paragraphs (b)(1) through (5) of this section.

(1) For an affected 112(j) source subject to construction, reconstruction or modification, the expected commencement date of installation, the expected completion date of installation and the anticipated date of startup of the affected 112(j) source.

(2) The hazardous air pollutants emitted by each affected 112(j) source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected 112(j) source.

(3) Any existing Federal, State or local limitations or requirements applicable to the affected 112(j) source.

(4) For each piece of equipment, activity or source, an identification of control technology in place.

(5) Information relevant to establishing the MACT floors.

(6) ~~The eC~~ certification by a responsible official of truth, accuracy, and completeness. This certification shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

(c) Part 3 MACT Application.

The Part 3 application for a MACT determination shall contain the information in paragraphs (c)(1) through (3) of this section.

(1) Recommended MACT floors, an emission standard or emission limitation that is equivalent to existing source MACT requirements and an emission standard or emission limitation that is equivalent to new source MACT requirements for the affected 112(j) source, and supporting information consistent with paragraph 63.52(f) of this subpart. The owner or operator may recommend a specific design, equipment, work practice, operational standard or combination thereof, as an emission limitation.

(2) Proposed control technology that, if properly operated and maintained, will meet, at minimum, the existing source and new source MACT requirements, including identification of the affected 112(j) sources to which the control technology shall be applied.

(3) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

(4) ~~The eC~~ certification by a responsible official of truth, accuracy, and completeness. This certification shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

Sec. 63.54 Pre-construction review procedures for affected 112(j) sources.

The owner or operator who constructs, reconstructs or modifies an affected 112(j) source after the section 112(j) deadline shall follow the procedures established under Regulations 2, 25 and/or 30 before commencing construction, reconstruction, or modification of the affected 112(j) source.

Sec. 63.55 Maximum achievable control technology (MACT) determinations for affected 112(j) sources subject to case-by-case determination of equivalent emission limitations.

(a) Determination of case-by-case MACT requirements. The Department shall issue final and legally

effective case-by-case MACT determinations for affected 112(j) and new affected 112(j) sources that are consistent with the existing source MACT and the new source MACT requirements, as defined in Sec. 63.51 of this subpart.

(b) Reporting to the Administrator.

The owner or operator shall submit copies of the Part 1, Part 2 and Part 3 MACT applications to the Administrator at the same time these applications are submitted to the Department.

Sec. 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source before the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Regulation 30 permit shall contain the promulgated standard rather than the emission limitation determined under Sec. 63.52 of this subpart, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source on or after the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Department shall incorporate requirements of that standard in the Regulation 30 permit upon its next renewal. The Department shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the issuance of the final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart, the Department is not required to change the emission limitation in the permit to reflect the promulgated standard if the Department determines that the level of control required in that prior case-by-case MACT determinations is

substantially as effective as that required by the promulgated standard according to Sec. 63.1(e) of subpart A of this regulation.

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart and the level of control required by the promulgated emission standard is less stringent than the level of control required by that prior case-by-case MACT determination, the Department may, but is not required to incorporate any less stringent emission limitation of the promulgated standard in the Regulation 30 permit applicable to such source(s) and shall consider any more stringent provisions of that prior case-by-case MACT determination to be applicable legal requirements when issuing or revising such a Regulation 30 permit.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60
(7 Del.C. Ch. 60)

Secretary's Order No.: 2003-A-0022

**Proposed Adoption of Subpart RRR into Regulation No.
38: Emission Standards for Hazardous Air Pollutants
for Secondary Aluminum Production**

ORDER

I. Background

On March 27, 2003 a public hearing was held in the DNREC Auditorium in Dover to receive comment on the proposed adoption of Subpart RRR into Regulation No. 38 concerning emission standards for hazardous air pollutants for secondary aluminum production. Delaware is proposing the adoption of Subpart RRR into the aforementioned Regulation as part of its requirements to maintain equivalency with its program authorization and equivalency with EPA's air toxics program.

This proposed amendment to Regulation 38 is for the adoption of the Federal standard that applies to secondary aluminum production facilities which perform one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations, recovering aluminum from dross, inline fluxing, or dross cooling.

Prior to this public hearing, a public workshop was held

on February 19, 2003 regarding the proposed adoption of Subpart RRR, however, no one from the public attended the workshop. It should be noted, however, that the same presentation prepared by the Department for this workshop was given privately to Mr. Jack Fitzgerald of Fitzgerald's Auto Salvage in Lincoln, Delaware, on March 5, 2003, due to Mr. Fitzgerald's facility being the only known source currently planning to operate a sweat furnace under the requirements of Subpart RRR. No member of the public attended the hearing on March 27, 2003. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated April 14, 2003, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated April 14, 2003 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed adoption of Subpart RRR into Regulation No. 38 be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting Subpart RRR into Regulation No. 38 will be beneficial to the State of Delaware, in that it will enable the State of Delaware to improve and/or enhance the overall performance of the Department's Division of Air Quality Management program. Furthermore, the adoption of Subpart RRR will permit the State of Delaware to remain main current with the Federal standard that applies to secondary aluminum production facilities, and will also help the Department to protect the public health, safety and welfare, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

John A. Hughes, Secretary

The Department is amending Regulation 38 by adding Subpart RRR, which follows. Subpart RRR does not change any of the existing subparts of Regulation 38 and shall be placed following Subpart T.

~~[5/11/2003~~ 6/11/2003]

Subpart RRR Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

The provisions of Subpart RRR - National Emission Standards for Secondary Aluminum Production, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 2002 and as amended on Sept. 24, 2002 and Dec. 30, 2002, are hereby adopted by reference with the following changes:

(a) "Department" shall replace all instances of "permitting authority", "permitting agency", "responsible permitting authority", and "applicable permitting agency".

(b) Paragraph 63.1500(e) shall be replaced with the following language: "The owner or operator of a secondary aluminum production facility subject to the provisions of this subpart, is subject to the title V permitting requirements under Regulation 30. The Department defers the affected facility from the title V permitting requirements until December 9, 2004, if the secondary aluminum production facility is not a major source and is not located at a major source as defined in subpart A of this regulation, and is not otherwise required to obtain a title V permit. All sources receiving a deferral under this section shall submit a title V permit application by December 9, 2005. The affected facility shall comply with the provisions of this subpart applicable to area sources if a deferral from title V permitting requirements has been granted to the facility by the Department."

(c) Add the following language after Section 63.1500: "[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]".

(d) Except in paragraph 63.1502(a), the following dates shall be replaced by the date ~~May~~ June 11, 2003:

(i) March 23, 2000;

(ii) March 24, 2003.

(e) Add the following language after Section 63.1501: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002]".

(f) The entire paragraph 63.1502(a) shall be replaced with the following language: "The following material is incorporated by reference in the corresponding sections noted. This material is incorporated as it exists on March 23, 2000:

(1) Chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (23rd edition, 1998), IBR approved for Sec. 63.1506(c);

(2) "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA/625/3-89/016); and

(3) "Fabric Filter Bag Leak Detection Guidance," (September 1997)."

(g) Paragraph 63.1502(b)(1) shall be replaced with the following language: "Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240-1634, telephone number (513) 742-2020;"

(h) Paragraph 63.1502(b)(2) shall be replaced with the following language: "The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA, NTIS no. PB 90-145756; and"

(i) Paragraph 63.1502(b)(3) shall be added with the following language: "U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD-19), Research Triangle Park, NC 27711."

(j) The opening sentence of Section 63.1503 shall be replaced with the following language: "Unless defined below, all terms in this subpart have the meanings given them in the Act or in subpart A of this regulation:"

(k) The definition of Cover flux in Section 63.1503 shall be replaced with the following language: "Cover flux means salt(s) added to the surface of molten aluminum in a group 1 or group 2 furnace, without agitation of the molten aluminum, for the purpose of preventing oxidation."

(l) The definition of HCl in Section 63.1503 shall be replaced with the following language: "HCl means, for the purposes of this subpart, emissions of hydrogen chloride that serve as a surrogate measure of the total emissions of hydrogen chloride, hydrogen fluoride, and chlorine."

(m) The definition of Sweat furnace in Section 63.1503 shall be replaced with the following language: "Sweat furnace means a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of metal by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point metal remains in solid form. These units are also commonly known as dry hearth furnaces."

(n) The definition of TEQ in Section 63.1503 shall be replaced with the following language: "TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA-625/3-89-016)."

(o) Add the following language after Section 63.1503: "[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]"

(p) Paragraph 63.1505(a) shall be replaced with the following language: "Summary. The owner or operator of a new or existing affected source must comply with each applicable limit in this section. Table 1505-1 of this subpart summarizes the emission standards for each type of source."

(q) Paragraph 63.1505(e) shall be replaced with the

following language: "Scrap dryer/delacquering kiln/decoating kiln: alternative limits. The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph (e) as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 760 deg.C (1400 deg.F) at all times. On and after the compliance date established by Sec. 63.1501:"

(r) Paragraph 63.1505(f)(1) shall be replaced with the following language: "The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 872 deg.C (1600 deg.F) or greater."

(s) Paragraph 63.1505(j)(1) shall be replaced with the following language: "0.02 kg of HCl per Mg (0.04 lb. of HCl per ton) of feed/charge, and"

(t) Replace the definition of Tti in paragraph 63.1505(k)(1) with the following language: "Tti = The feed/charge rate, for an operating cycle, for individual emission unit i; and"

(u) Replace the definition of Lti_{HCl} in paragraph 63.1505(k)(2) with the following language: "Lti_{HCl} = The HCl emission limit for individual emission unit i in paragraph (i)(4) of this section for a group 1 furnace or in paragraph (j)(1) of this section for an in-line fluxer and"

(v) Paragraph 63.1505(k)(6) shall be replaced with the following language: "With the prior approval of the Department, an owner or operator may redesignate any existing group 1 furnace or in-line fluxer at a secondary aluminum production facility as a new emission unit. Any emission unit so redesignated may thereafter be included in a new SAPU at that facility. Any such redesignation will be solely for the purpose of this regulation and will be irreversible."

(w) Add the following language after Section 63.1505: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]"

(x) Paragraph 63.1506(a)(4) shall be replaced with the following language: "Operating requirements are summarized in Table 1506-1 of this subpart."

(y) Paragraph 63.1506(b) shall be replaced with the following language: "Labeling. The owner or operator must provide and maintain easily visible labels posted at each sweat furnace, group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln that identifies the applicable emission limits and means of compliance, including:"

(z) Paragraph 63.1506(b)(1) shall be replaced with the following language: "The type of affected source or emission unit (e.g., scrap dryer/delacquering kiln/decoating kiln, sweat furnace, group 1 furnace, group 2 furnace, in-line fluxer)."

(aa) Paragraph 63.1506(b)(3) shall be replaced with the following language: "The afterburner operating temperature and design residence time for a scrap dryer/delacquering kiln/decoating kiln or sweat furnace."

(bb) Paragraph 63.1506(d)(1) shall be replaced with the following language: "Except as provided in paragraph (d)(3) of this section, install and operate a device that measures and records or otherwise determines the weight of feed/charge (or throughput) for each operating cycle or time period used in the performance test."

(cc) Paragraph 63.1506(e)(3) shall be replaced with the following language: "If visible emission observations are used to meet the monitoring requirements in Sec. 63.1510, the owner or operator must initiate corrective action within 1-hour of any observation of visible emissions in excess of 10 percent opacity during a daily visible emissions test and complete the corrective action procedures in accordance with the OM&M plan."

(dd) Paragraph 63.1506(h)(1)(ii) shall be replaced with the following language: "872 deg.C (1600 deg.F) if a performance test was not conducted, and the afterburner meets the specifications of Sec. 63.1505(f)(1)."

(ee) Add the following language after Section 63.1506: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]".

(ff) Paragraph 63.1510(a) shall be replaced with the following language: "Summary. On and after the compliance date established by Sec. 63.1501, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 1510-1 of this subpart."

(gg) Paragraph 63.1510(b) shall be replaced with the following language: "Operation, maintenance, and monitoring (OM&M) plan. The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written OM&M plan. The owner or operator of an existing affected source must submit the OM&M plan to the Department no later than the compliance date established by Sec. 63.1501(a). The owner or operator of any new affected source must submit the OM&M plan to the Department within 90 days after a successful initial performance test under Sec. 63.1511(b), or within 90 days after the compliance date established by Sec. 63.1501(b) if no initial performance test is required. The plan must be accompanied by a written certification by the owner or operator that the OM&M plan satisfies all requirements of this section and is otherwise consistent with the requirements

of this subpart. The owner or operator must comply with all of the provisions of the OM&M plan as submitted to the Department, unless and until the plan is revised in accordance with the following procedures. If the Department determines at any time after receipt of the OM&M plan that any revisions of the plan are necessary to satisfy the requirements of this section or this subpart, the owner or operator must promptly make all necessary revisions and resubmit the revised plan. If the owner or operator determines that any other revisions of the OM&M plan are necessary, such revisions will not become effective until the owner or operator submits a description of the changes and a revised plan incorporating them to the Department. Each plan must contain the following information:"

(hh) Paragraph 63.1510(b)(4)(ii) shall be replaced with the following language: "Procedures for the quality control and quality assurance of continuous emission or opacity monitoring systems as required by the general provisions in subpart A of this regulation."

(ii) Paragraph 63.1510(b)(6)(i) shall be replaced with the following language: "Procedures to determine and record the cause of a deviation or excursion, and the time the deviation or excursion began and ended; and"

(jj) Paragraph 63.1510(c) shall be replaced with the following language: "Labeling. The owner or operator must inspect the labels for each group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap dryer/delacquering kiln/decoating kiln at least once per calendar month to confirm that posted labels as required by the operational standard in Sec. 63.1506(b) are intact and legible."

(kk) Paragraphs 63.1510(e)(2) and 63.1510(j)(1)(iii) shall be replaced with the following language: "The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, which shall not exceed 6 months, or if no calibration schedule is specified, at least once every 6 months."

(ll) Paragraph 63.1510(f)(1)(ii) shall be replaced with the following language: "Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (September 1997). Other bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations."

(mm) Paragraph 63.1510(g)(1) shall be replaced with the following language: "The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring systems in subpart A of this regulation."

(nn) Paragraph 63.1510(h)(1) shall be replaced with the following language: "The owner or operator must install,

calibrate, maintain, and operate a device to continuously monitor and record the temperature of the fabric filter inlet gases consistent with the requirements for continuous monitoring systems in subpart A of this regulation.”

(oo) Paragraph 63.1510(i)(1)(ii) shall be replaced with the following language: “Subject to the approval of the Department, installing, operating and maintaining a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system to confirm that lime is free-flowing. If lime is found not to be free-flowing, the owner or operator must promptly initiate and complete corrective action; or”.

(pp) Paragraph 63.1510(j)(5) shall be replaced with the following language: “The owner or operator of a group 1 furnace or in-line fluxer performing reactive fluxing may apply to the Administrator for approval of an alternative method for monitoring and recording the total reactive flux addition rate based on monitoring the weight or quantity of reactive flux per ton of feed/charge for each operating cycle or time period used in the performance test [~~The Administrator will not approve the alternative monitoring method unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis, in accordance with 40 CFR 63.1510(j)(5) (July 1, 2002 edition)]”~~”

(qq) Paragraph 63.1510(n)(2) shall be replaced with the following language: “Submit a certification of compliance with the operational standards in Sec. 63.1506(m)(6) for each 6-month reporting period. Each certification must contain the information in Sec. 63.1516(b)(2)(iii).”

(rr) Paragraph 63.1510(o)(1)(i) shall be replaced with the following language: “The owner or operator of an existing affected source must submit the site-specific monitoring plan to the Department for review at least 6 months prior to the compliance date, but no earlier than May 11, 2003.”

(ss) Paragraph 63.1510(o)(5) shall be replaced with the following language: “If a continuous emission monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of the general provisions in subpart A of this regulation.”

(tt) Paragraph 63.1510(s)(1)(iv) shall be replaced with the following language: “Information and data demonstrating compliance for each emission unit with all applicable design, equipment, work practice, or operational standards of this subpart; and”.

(uu) Paragraph 63.1510(s)(2)(i) shall be replaced with the following language: “Any averaging among emissions of differing pollutants;”.

(vv) Replace the definition of n in paragraph 63.1510(t)(4) with the following language: “n = The number of emission units in the secondary aluminum processing unit.”

(ww) Paragraph 63.1510(v) shall be replaced with the following language: “Alternative monitoring method for lime addition. The owner or operator of a lime-coated fabric filter that employs intermittent or noncontinuous lime addition may apply to the Administrator for approval of an alternative method for monitoring the lime addition schedule and rate based on monitoring the weight of lime added per ton of feed/charge for each operating cycle or time period used in the performance test [~~The Administrator will not approve the alternative monitoring method unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis, in accordance with 40 CFR 63.1510(v) (July 1, 2002 edition)]”.~~”

(xx) Paragraph 63.1510(w) shall be replaced with the following language: “Alternative monitoring methods. If an owner or operator wishes to use an alternative monitoring method to demonstrate compliance with any emission standard in this subpart, other than those alternative monitoring methods which may be authorized pursuant to Sec. 63.1510(j)(5) and Sec. 63.1510(v), the owner or operator may submit an application to the Administrator (with a copy sent to the Department) [~~Any such application will be processed according to the criteria and procedures set forth in paragraphs (w)(1) through (6) of this section, in accordance with 40 CFR 63.1510(w) (July 1, 2002 edition). The owner or operator must continue to use the original monitoring requirement until approval is received from the Administrator to use another monitoring procedure, and the Department has been provided a copy of such approval by the owner or operator.]”~~”

(yy) Paragraph 63.1510(w)[~~(2)~~] (1) through (6) shall be deleted. [~~shall be replaced with the following language: “The owner or operator must continue to use the original monitoring requirement until necessary data are submitted, approval is received from the Administrator to use another monitoring procedure, and the Department has been provided a copy of such approval by the owner or operator.”]~~”

(zz) Paragraph 63.1510(w)(4)(i) shall be replaced with the following language: “Notice of the information and findings upon which the intended disapproval is based and”.

(aaa) Add the following language after Section 63.1510: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(bbb) Paragraph 63.1511(b) shall be replaced with the following language: “Initial performance test. Following approval of the site-specific test plan, the owner or operator

must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in Sec. 63.1515(b). The owner or operator of any existing affected source for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by Sec. 63.1501(a). The owner or operator of any new affected source for which an initial performance test is required must conduct this initial performance test within 90 days after the date for compliance established by Sec. 63.1501(b). Except for the date by which the performance test must be conducted, the owner or operator must conduct each performance test in accordance with the requirements and procedures set forth in Sec. 63.7(e). Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/ F. Owners or operators of sweat furnaces meeting the specifications of Sec. 63.1505(f)(1) are not required to conduct a performance test.”

(ccc) Add the following language after Section 63.1511: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(ddd) Paragraph 63.1512(e) shall be replaced with the following language: “Group 1 furnace (including melting/holding furnaces) without add-on air pollution control devices. In the site-specific monitoring plan required by Sec. 63.1510(o), the owner or operator of a group 1 furnace (including melting/holding furnaces) without add-on air pollution control devices must include data and information demonstrating compliance with the applicable emission limits.”

(eee) Paragraph 63.1512(m)(1) shall be replaced with the following language: “Prior to the initial performance test, the owner or operator must conduct a performance evaluation for the temperature monitoring device according to the requirements of Sec. 63.8 of this regulation.”

(fff) Replace the definition of W_1 in paragraph 63.1512(o)(3) with the following language: “ W_1 = Weight of reactive flux gas or liquid injected;”.

(ggg) Replace the definition of F_2 in paragraph 63.1512(o)(3) with the following language: “ F_2 = Fraction of solid reactive chloride flux that is chlorine (e.g., $F = 0.75$ for magnesium chloride); and”.

(hhh) Paragraph 63.1512(o)(5) shall be replaced with the following language: “If a solid reactive flux other than magnesium chloride is used, the owner or operator must derive the appropriate proportion factor (F_1 or F_2) subject to approval by the Department.”

(iii) Paragraph 63.1512(r) shall be replaced with the

following language: “Labeling. The owner or operator of each scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace, sweat furnace, and in-line fluxer must submit the information described in Sec. 63.1515(b)(3) as part of the notification of compliance status report to document conformance with the operational standard in Sec. 63.1506(b).”

(jjj) Paragraph 63.1512(s) shall be replaced with the following language: “Capture/collection system. The owner or operator of a new or existing affected source or emission unit with an add-on control device must submit the information described in Sec. 63.1515(b)(5) as part of the notification of compliance status report to document conformance with the operational standard in Sec. 63.1506(c).”

(kkk) Add the following language after Section 63.1512: “[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]”.

(lll) Paragraph 63.1513(d) shall be replaced with the following language: “Conversion of D/F measurements to TEQ units. To convert D/F measurements to TEQ units, the owner or operator must use the procedures and equations in “Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update” (EPA-625/3-89-016).”

(mmm) The opening of Paragraph 63.1513(e)(3) shall be replaced with the following language: “Use Equation 11 to compute the aluminum mass-weighted D/F emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit ($E_{C_{D/F}}$) is less than or equal to the emission limit for the secondary aluminum processing unit ($L_{C_{D/F}}$) calculated using Equation 3 in Sec. 63.1505(k).”

(nnn) Paragraph 63.1515(a)(3) shall be replaced with the following language: “As required by Sec. 63.9(b)(4), the owner or operator of a new or reconstructed major affected source or of a source that has been reconstructed such that the source becomes a major affected source, that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is required by Sec. 63.5(d) must provide the following notifications:”.

(ooo) Paragraph 63.1515(a)(3)(i) shall be replaced with the following language: “Intention to construct a new major affected source, reconstruct a major source, or reconstruct a source such that the source becomes a major affected source;”.

(ppp) Paragraph 63.1515(a)(4)(i) shall be replaced with the following language: “[Reserved].”

(qqq) Paragraph 63.1515(a)(4)(ii) shall be replaced with the following language: “[Reserved].”

(rrr) Paragraph 63.1515(a)(6) shall be replaced with

the following language: "As required by Sec. 63.9(e) and (f), the owner or operator must provide notification of the anticipated date for conducting performance tests and visible emission observations. The owner or operator must notify the Department of the intent to conduct a performance test at least 60 days before the performance test is scheduled; notification of opacity or visible emission observations for a performance test must be provided at least 30 days before the observations are scheduled to take place."

(sss) Paragraph 63.1515(b) shall be replaced with the following language: "Notification of compliance status report. Each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after the compliance dates specified in Sec. 63.1501(a). Each owner or operator of a new affected source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by Sec. 63.1511(b), or within 90 days after the compliance date established by Sec. 63.1501(b) if no initial performance test is required. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (b)(1) through (10) of this section and shall be submitted to the Department (with a copy sent to the Administrator). The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:"

(ttt) Paragraph 63.1515(b)(8) shall be replaced with the following language: "Manufacturer's specification or analysis documenting the design residence time of no less than 0.8 seconds and design operating temperature of no less than 872 deg.C (1600 deg.F) for each afterburner used to control emissions from a sweat furnace that is not subject to a performance test."

(uuu) Paragraph 63.1515(b)(10) shall be replaced with the following language: "Startup, shutdown, and malfunction (SSM) plan, with revisions."

(vvv) Add the following language after Section 63.1511: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]".

(www) Paragraph 63.1516(a) shall be replaced with the following language: "Startup, shutdown, and malfunction plan/reports. The owner or operator must develop and implement a written plan as described in Sec. 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of

corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by Sec. 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in Sec. 63.6(e)(3) and Sec. 63.10(d)(5). In addition to the information required in Sec. 63.6(e)(3), the plan must include:"

(xxx) Paragraph 63.1516(b)(1)(v) shall be replaced with the following language: "An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the SSM plan as described in Sec. 63.6(e)(3)."

(yyy) Paragraph 63.1516(b)(2)(vi) shall be replaced with the following language: "For each in-line fluxer using no reactive flux: "Only nonreactive, non-HAP-containing/non-HAP-generating flux gases, agents, or materials were used at any time during this reporting period.""

(zzz) Paragraph 63.1516(c) shall be replaced with the following language: "Annual compliance certifications. For the purpose of annual certifications of compliance required by Regulation 30, the owner or operator must certify continuing compliance based upon, but not limited to, the following conditions:"

(aaaa) Paragraph 63.1516(d) shall be added with the following language: "Submittals. The owner or operator shall submit all reports, notifications, and/or certifications required by this subpart to the Department, ~~(with a copy sent to the EPA Region 3 office, to the attention of Judith Katz (3AP00), Director, Air Protection Division, US EPA Region III, 1650 Arch Street, Philadelphia, PA 19103)~~ with a copy sent to the Director of the Air Protection Division at the EPA Region 3 office."

(bbbb) Paragraph 63.1517(a) shall be replaced with the following language: "As required by Sec. 63.10(b), the owner or operator shall maintain files of all information (including all reports and notifications) required by Sec. 63.10 and this subpart."

(cccc) Paragraph 63.1517(a)(2) shall be replaced with the following language: "The owner or operator may retain records on microfilm, computer disks, magnetic tape, or microfiche."

(dddd) Paragraph 63.1517(b)(4)(i) shall be replaced with the following language: "Records of inspections at least once every 8-hour period verifying that lime is present in the feeder hopper or silo and flowing, including any inspection where blockage is found, with a brief explanation of the cause of the blockage and the corrective action taken, and records of inspections at least once every 4-hour period for the subsequent 3 days. If flow monitors, pressure drop sensors or load cells are used to verify that lime is present in the hopper and flowing, records of all monitor or sensor output including any event where blockage was found, with

a brief explanation of the cause of the blockage and the corrective action taken.”

(eeee) Add the following language after Section 63.1511: “[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]”.

(ffff) Section 63.1518 shall be replaced with the following language: “Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources as identified in Table 1 of this subpart.”

(gggg) Section 63.1519 shall be renamed with the following language: “[Reserved]”.

(hhhh) The entire content of Paragraph 63.1519(a) as promulgated shall be deleted and its heading shall be replaced with the following language: “(a) [Reserved].”

(iiii) The entire content of Paragraph 63.1519(b) as promulgated shall be deleted and its heading shall be replaced with the following language: “(b) [Reserved].”

(jjjj) Replace the title of Table 1 following Section 63.1520 with the following title: “Table 1505-1 of Subpart RRR – Emission Standards for New and Existing Affected Sources”.

(kkkk) Replace the definition of $Lti_{D/F}$ in Table 1505-1 of Subpart RRR with the following language: “ $Lti_{D/F}$ = the D/F emission limit for individual emission unit i in the secondary aluminum processing unit [$\mu\text{g TEQ/Mg}$ (gr TEQ/ton) of feed];”.

(llll) Replace the title of Table 2 following Section 63.1520 with the following title: “Table 1506-1 of Subpart RRR.—Summary of Operating Requirements for New and Existing Affected Sources and Emission Units”.

(mmmm) In Table 1506-1 of Subpart RRR, the third entry in the “Affected source/emission unit” column is replaced with the following language: “Group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap dryer/delacquering kiln/decoating kiln.”

(nnnn) In Table 1506-1 of Subpart RRR, the third entry in the “Operating requirements” column is replaced with the following language: “Identification, operating parameter ranges and operating requirements posted at affected sources and emission units; control device temperature and residence time requirements posted at scrap dryer/delacquering kiln/decoating kiln or sweat furnace.”

(oooo) Replace the title of Table 3 following Section 63.1520 with the following title: “Table 1510-1 of Subpart RRR.—Summary of Monitoring Requirements for New and Existing Affected Sources and Emission Units”.

(pppp) In Table 1510-1 of Subpart RRR, the third entry in the “Affected source/Emission unit” column is replaced with the following language: “Group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap

dryer/delacquering kiln/decoating kiln.”

(qqqq) In Table 1510-1 of Subpart RRR, all entries in the “Monitoring requirements” column of “40 CFR part 63” are replaced with “this regulation”.

(rrrr) In Table 1510-1 of Subpart RRR, the fourteenth entry in the “Monitoring requirements” column is replaced with the following language: “For continuous injection systems, inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day period; record feeder setting daily.”

(ssss) In Table 1510-1 of Subpart RRR, the thirty-seventh entry in the “Monitoring requirements” column is replaced with the following language: “Record type of permissible feed/charge material; certify charge materials every 6 months.”

(tttt) Replace the title of Appendix A following Section 63.1520 with the following title: “Table 1 of Subpart RRR of Regulation 38—Subpart A (General Provisions) Applicability to Subpart RRR”.

(uuuu) In Table 1 of Subpart RRR, the comment for Section 63.1(c)(2) under “Citation” shall be replaced with the following language: “States have option to defer area sources from title V permit program.”

(vvvv) In Table 1 of Subpart RRR, Section 63.7(a)-(h) under “Citation” shall be replaced with the following language: “63.7(a)”.

(wwww) In Table 1 of Subpart RRR, Section 63.10(c)(15) shall be added under “Citation”, next to which shall be added “Yes.” under “Applies to RRR.”

(xxxx) Add the following language after Table 1 of Subpart RRR: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002]”.

[(yyyy) The definition of Secondary aluminum production facility in Section 63.1503 shall be replaced with the following language: “Secondary aluminum production facility means any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, inline fluxing, or dross cooling. A secondary aluminum production facility may be independent or part of a primary aluminum production facility. For purposes of this subpart, aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities are not considered to be secondary aluminum production facilities if the only materials they melt are clean charge, customer returns, or internal scrap, and if they do not operate sweat furnaces, thermal chip dryers, or scrap

dryers/delacquering kilns/decoating kilns. The determination of whether a facility is a secondary aluminum production facility is only for purposes of this subpart and any regulatory requirements which are derived from the applicability of this subpart, and is separate from any determination which may be made under other environmental laws and regulations, including whether the same facility is a "secondary metal production facility" as that term is used in the Act and Regulation 25 Section 3.0(A)(1)(i) ("prevention of significant deterioration of air quality")."

(zzzz) Paragraph 63.1510(f)(2)(ii) shall be replaced with the following language: "Each continuous opacity monitoring system must meet the design and installation requirements of Performance Specification 1 in appendix B to 40 CFR part 60 (July 1, 2002 edition)."

(aaaaa) Paragraph 63.1510(f)(3)(i) shall be replaced with the following language: "Perform a visible emissions test for each aluminum scrap shredder using a certified observer at least once a day according to the requirements of Method 9 in appendix A to 40 CFR part 60 (July 1, 2002 edition). Each Method 9 test must consist of five 6-minute observations in a 30-minute period; and".

(bbbbbb) Paragraph 63.1511(c) shall be replaced with the following language: "Test methods. The owner or operator must use the following methods in appendix A to 40 CFR part 60 (July 1, 2002 edition) to determine compliance with the applicable emission limits or standards:".

(ccccc) Paragraph 63.1512(a) shall be replaced with the following language: "Aluminum scrap shredder. The owner or operator must conduct performance tests to measure PM emissions at the outlet of the control system. If visible emission observations is the selected monitoring option, the owner or operator must record visible emission observations from each exhaust stack for all consecutive 6-minute periods during the PM emission test according to the requirements of Method 9 in appendix A to 40 CFR part 60 (July 1, 2002 edition)."

(dddddd) Paragraph 63.1512(l) shall be replaced with the following language: "Continuous opacity monitoring system. The owner or operator of an affected source or emission unit using a continuous opacity monitoring system must conduct a performance evaluation to demonstrate compliance with Performance Specification 1 in appendix B to 40 CFR part 60 (July 1, 2002 edition). Following the performance evaluation, the owner or operator must measure and record the opacity of emissions from each exhaust stack for all consecutive 6-minute periods during the PM emission test."]

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Dental Examiners	Mr. Donald T. Collins	10/20/2003
Board of Geologists	Mr. Williams S. Schenck	4/10/2006
Board of Medical Practice	Vincent Lobo, Jr., D.O.	4/15/2006
Board of Pension Trustees	Ms. Helen Foster Parson	3/27/2007
Child Protection Accountability Commission	Ms. Jennifer Ranji	Pleasure of the Governor
Delaware Community Foundation	Mr. Howard R. Layton	Pleasure of the Governor
Delaware Economic and Financial Advisory Council	Mr. Richard H. Derrickson Mr. David Link	Pleasure of the Governor Pleasure of the Governor
Delaware Interscholastic Athletic Association	Mr. Gerald L. Allen Robert J. Andrzejewski, Ph.D. Mr. Kevin E. Carson Mr. James W. Harvey Jeffrey E. Hawtof, M.D. Ms. Susan S. Heiss Mr. Mark A. Holodick Mr. Walter E. Kee, Jr. Mr. Gerald W. Kobasa Ms. Phyllis R. Kohel Garrett B. Lyons, Jr., D.D.S. Mr. William C. Passwaters Mr. Robert D. Reed Mr. Zane Q. Robinson Ms. Kathleen H. Wilbur Mr. Ted C. Williams Sister Ann Michele Zwosta, OSF	3/27/2006 3/27/2006 3/27/2005 3/27/2004 3/27/2005 3/27/2004 4/2/2005 3/27/2006 3/27/2005 3/27/2006 3/27/2005 3/27/2006 3/27/2006 3/27/2004 3/27/2005 3/27/2004 4/2/2004
Delaware Nutrient Management Commission	Mr. Darold M. Adkins Mr. Richard W. Sterling	3/15/2006 3/15/2006
Human Relations Commission	Ms. Eleanor M. Kiesel Mookkan Periyasamy, Ph.D.	4/24/2006 4/24/2006
Organ and Tissue Donor Awareness Board	Ray A. Blackwell, M.D. Mr. James T. Quirk	4/28/2006 4/28/2006
State Rehabilitation Advisory Council	Mr. Jeffrey S. Ansley	4/24/2006
Violent Crimes Compensation Board	Ms. Leah Betts	4/17/2006

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

PUBLIC NOTICE

**Rehabilitative Services/Community Support Services
Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS), pursuant to the notice requirements of 42 CFR 447.205, publishes this notice of proposed changes in methods and standards for establishing payment rates under the Delaware Medicaid/Medical Assistance Program (DMAP). This notice is being given to provide information of public interest with respect to the intent of DSS to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan regarding the Rehabilitative Services/Community Support Services Program.

DMAP is proposing to change the rate-setting methodology for the rehabilitative services option and to add language to revise and clarify coverage policies. These revisions and clarifications include the following:

- Division name change: DADAMH to the Division of Substance Abuse and Mental Health (DSAMH);
- Add *Rehabilitative Services Assistant* to the list of staff qualified to provide community support services;
- Psychosocial rehabilitative therapy will be provided in 4-hour blocks, instead of 5-hour blocks;
- Residential Rehabilitation Services facilities shall be required to comply with all applicable facility licensing requirements;
- Delete from the list of limitations on services, the following: 1) minimum of one face-to-face clinical contact per week; 2) clients treated with psychotropic drugs must be evaluated monthly face-to-face by a physician; and 3) component services may not be subcontracted to independent provider organizations.
- Allows DSAMH to move to uniform daily rates for the services; essentially, from a fee-for-service to a monthly case rate (per member per month for each client who received a service during that month).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed changes must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2003.

The action concerning the determination of whether to submit to CMS an amendment to the Title XIX Medicaid State Plan will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DSS PUBLIC NOTICE #03-14
REVISIONS:**

Attachment 3.1-A
Page 6a

State: DELAWARE

LIMITATIONS ON REHABILITATIVE SERVICES

13d. Rehabilitative Services:

Rehabilitative Services are limited to: 1) *community support services* for individuals who would benefit from services designed for or associated with mental illness, alcoholism or drug dependence, excluding those services of an educational or vocational nature; and 2) *day health and rehabilitation services* for individuals who would benefit from services designed for or associated with the treatment of mental retardation or developmental disabilities.

1) *Community Support Services*

ELIGIBLE PROVIDERS

Providers are organizations certified by the Division of ~~Alcoholism, Drug Substance~~ Abuse and Mental Health (~~Division~~) in accordance with the Delaware Medical Assistance Program Medicaid Provider Manual for Rehabilitative/Community Support Service Programs.

DEFINITION OF COMMUNITY SUPPORT SERVICES

Community support services are medically related treatment, rehabilitative and support services provided through self-contained programs by teams of clinicians, associate clinicians and assistant clinicians under the supervision of a physician.

FREQUENCY, DURATION AND SCOPE

Community support services are provided, as medically necessary subject to the limitations of the state plan, to assist eligible persons cope with the symptoms of their illnesses, minimize the effects of their disabilities on their capacity for independent living and prevent or limit periods of hospital treatment.

Eligible recipients are Medicaid recipients who would benefit from services designed for or associated with mental illness, alcoholism or drug addiction. The provider's physician must certify medical necessity for community support services based on a completed comprehensive medical/psycho-social evaluation.

QUALIFIED STAFF

Community support programs may bill Medicaid for community support services only when authorized as medically necessary by a physician and delivered by qualified staff. Services rendered by any qualified staff other than a physician must be provided under a physician's supervision as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Component community service activities require specific staff qualifications as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Following are illustrative definitions of staff listed as qualified to provide one or more community support service activities.

1. **Physician:** a person with a Medical Degree or Doctor of Osteopathy degree, who is licensed to practice Medicine in Delaware and has completed (or is enrolled in) an accredited residency training program in psychiatry, internal medicine or family practice.

2. **Clinician:** a person with a doctoral or master's degree in psychology, social work, nursing, rehabilitation or counseling from an accredited college or university (or a registered nurse with a certificate in mental health nursing from the American Nurses Association).

3. **Associate Clinician:** a person with a bachelor's degree in a human service field or a registered nurse.

4. **Assistant Clinician:** a person with an associate degree, a licensed practical nurse or a certified counselor lacking the academic credentials of an associate clinician.

5. **Rehabilitative Services Assistant:** a person with a high school diploma or GED who has received documented training that shall, at a minimum, include: 1) a complete course in medications used in the treatment used in the treatment of mental illness including side effects assigned; 2) a course in mental illness including symptoms of the major mental illnesses, mood and personality disorders; 3) a course in first aid, including CPR training.

A clinician with clinical/administrative experience in provision of community support services serves as program coordinator. A physician serves as clinical supervisor, providing direct supervision of the aspects of the program that relate to client treatment and providing clinical supervision of staff. The physician is available full- or part-time at provider sites to provide direct service, to provide direct supervision to other staff, and to

participate in assessment of client needs and planning of service provision. The physician has 24-hour backup arrangements with other physicians for coverage when he/she is unavailable.

COVERED SERVICES

Enrolled providers may bill Medicaid for community support services when one or more of the following community support service activities are rendered to eligible recipients by qualified staff:

Comprehensive Medical/Psychosocial Evaluation: A multi-functional assessment of the client conducted by a physician (psychiatrist, internist or family practitioner), and clinicians under the supervision of the physician, to establish the medical necessity of provision of services by the community support service provider and to formulate a treatment plan.

The comprehensive medical/psychosocial evaluation will be conducted with 30 days of admission to the program and at least annually thereafter. It must be documented in the client's record on forms approved by the Division.

The comprehensive medical/psychosocial evaluation will include the following assessments: 1) extent and effects of drug and/or alcohol use; 2) medical systems survey; 3) medication history; 4) psychiatric history and mental status examination; 5) social history/update; 6) quality of life inventory; 7) social skills and daily living skills assessment; 8) diagnosis on all axes in accordance with DSM-III-R criteria; and 9) clinical risk factors. The evaluation will also include the formulation and review with the client of an individual treatment plan.

Physician Services: Services provided within the scope of practice of medicine or osteopathy as defined by State law and by or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

In the context of community support service programs, physician services refer to medical or psychiatric assessment, treatment, and prescription of pharmacotherapy. Medical and psychiatric nursing services including components of physical assessment, medication assessment and medication administration provided by registered nurses and licensed practical nurses are provided under personal supervision of the physician.

Emergency Services: Therapy performed in a direct and face-to-face involvement with the client available on a 24-hour basis to respond to a psychiatric or other medical condition which threatens to cause the admission of the client to a hospital, detoxification or other crisis facility. Emergency services are provided by a physician, clinician, ~~or~~ associate clinician or rehabilitative services assistant.

Counseling and Psychotherapy: Counseling is supportive psychotherapy performed as needed in a direct

and face-to-face involvement with the client available on a 24-hour basis to listen to, interpret and respond to the client's expression of her/his physical, emotional and/or cognitive functioning or problems. It is provided within the context of the goals of the program's clinical intervention as stated in the client's treatment plan. Its purpose is to help the client achieve and maintain psychiatric and/or drug/alcohol-free stability. Its broader purpose is to help clients improve their physical and emotional health and to cope with and gain control over the symptoms of their illnesses and effects of their disabilities. Counseling is provided by physicians, clinicians, associate clinicians and assistant clinicians who are credentialed counselors or learning and practicing under direct supervision by a credentialed clinician.

In addition to supportive psychotherapy there are several highly specific modalities of psychotherapy, each based on an empirically valid body of knowledge about human behavior. Provision of each requires specific credentials. Although the nature of the client's needs and the specific modality of therapy determine its duration, psychotherapy has circumscribed goals, a definite schedule and a finite duration. Examples include: psychodynamic therapy, psychoeducational therapy, multi-family group therapy, and cognitive therapy. The assessments, treatment plans and progress notes in client records must justify, specify and document the initiation, frequency, duration and progress of such specialized modalities of psychotherapy.

Psychotherapy may be provided by physicians and clinicians who are credentialed in specific modalities or learning and practicing under the supervision of one who is credentialed.

Psychiatric Rehabilitative Services: Rehabilitative therapy provided on an individual and small group basis to assist the client to gain or relearn skills needed to live independently and sustain medical/psychiatric stability. Psychiatric rehabilitation is provided primarily in home and community based settings where skills must be practiced. Psychiatric rehabilitative services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Psychosocial Rehabilitation Center Services: Facility based, group rehabilitative therapy for clients who can not be adequately served through only individualized home and community based psychiatric rehabilitative services. Psychosocial rehabilitative therapy is provided to assist the client to gain or relearn skills needed to live independently and sustain medical / psychiatric stability. Therapy is provided in ~~5~~ 4-hour blocks for up to five days per week at a psychosocial rehabilitation center facility. Services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Residential Rehabilitation Services: Facility-based, 24-hour rehabilitative therapy for clients who can not

be adequately served through psychosocial rehabilitation center and/or individualized home and community based psychiatric rehabilitative services. Residential rehabilitation services are provided to assist the client to gain or relearn skills needed to live independently and sustain medical / psychosocial stability. Residential Rehabilitation Services ~~are provided in a licensed mental health group home or a licensed alcoholism and drug abuse residential treatment program~~ facilities shall be required to comply with all applicable facility licensing requirements. Services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Services must be authorized by a physician's determination of medical necessity, must be supported by an individual treatment plan signed by the physician and must be supervised by a physician in a manner prescribed by the Medicaid Provider Manual for Rehabilitative / Community Support Service Programs.

LIMITATIONS

Services provided beyond 60 days following entry to the program, or the anniversary date of entry to the program, without completion of a comprehensive medical and psychosocial assessment, treatment plan and physician's certification of medical necessity are not reimbursable. Psychosocial rehabilitation center services must be re-certified by the program physician every six months.

Vocational counseling, vocational training at a classroom or job site, academic/remedial educational services and services which are solely recreational in nature are not reimbursable by Medicaid.

Services must be provided in accordance with the Medicaid Provider Manual.

~~Providers must attempt to provide each client a minimum of one face-to-face clinical contact per week.~~

Services provided in an institution for mental diseases are not reimbursable.

~~Clients who are treated with psychotropic medication must be evaluated monthly face-to-face by a physician.~~

~~Component services of community support service programs may not be sub-contracted to independent provider organizations.~~

Room and board services are not coverable.

Attachment 4.19-B

Page 4

Reimbursement Methodologies for Rehabilitative Services:

1) *Community Support Service Programs*

General Provisions:

~~Payment for community support services is based on a fee for service, the rates for which are calculated on a~~

prospective basis for each fiscal year. Rates exclude costs related to room and board. Rates are based on the provider's budget, projected census of active clients and productivity standards of billable staff time. Rates are based on each provider's projected operating expenses, and thus may vary from provider to provider. For each provider, a single rate will be paid for all service units, with the exception of Psychosocial Rehabilitation Center and Residential Rehabilitation Service units, the rates for which shall be separately determined. These expenses are costs which are allowable and reasonable as defined within the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH) Provider Reimbursement Manual. Prospective costs are the costs reported in each provider's annual budget submitted to DADAMH in accordance with the Division's prescribed methodology. Each provider's prospective budget and rate per unit of community support service is subject to approval by DADAMH. A rate setting committee (including representatives of the Department of Health and Social Services' Divisions of Social Services and Management Services) recommends the rates to be established for each provider by DADAMH. Providers are required to submit quarterly cost/expenditure reports against the prospective rate-setting budget.

Reimbursement Methodology for Community Support Services

Rates for Community Support Services as defined in Attachment 3.1-A will be established by a rate setting committee composed of representatives of various Divisions of the Delaware Department of Health and Social Services, including the Division of Social Services (DSS), the Division of Management Services, and the Division of Substance Abuse and Mental Health.

Rates for all services with the exception of Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are to be set initially and for three subsequent fiscal years based upon a trend analysis of Medicaid expenditures for individualized home and community based Community Support Services during the base period of SFY 2000 through SFY 2002 and adjusted thereafter by the rate setting committee.

Rates for Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are provider specific and are calculated by determining the total costs for each provider of the respective services, including cost of services to all clients regardless of Medicaid eligibility.

New Programs:

New providers will submit projected costs of services. The rate setting committee will compare the provider's proposed budget against a statewide model budget to determine the reasonableness of various cost components. The prospective rate for providers of new community

support service programs (other than Psychosocial Rehabilitation Centers and Residential Rehabilitation) will be initially set based on anticipated 40 percent utilization of budgeted billable units in the first year, 70 percent in the second year, 90 percent in the third year and 100 percent in the fourth and successive years. Psychosocial Rehabilitation Center services will be initially set based on anticipated 90 percent utilization of budgeted billable units in the first year, and 100 percent in the second and successive years. Residential Rehabilitation services will be established based on an anticipated ongoing occupancy rate of 90 percent. Rates for new providers will be set and reviewed semi-annually during the implementation years for each. Actual provider utilization of budgeted billable units will be monitored. A significant upward variation from that upon which the rate was initially set will prompt a prospective mid-year rate adjustment commensurately based upon utilization during the previous period.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Temporary Assistance to Needy Families (TANF) Caseload Reduction Credit Report

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the TANF Caseload Reduction Credit Report for fiscal year 2003. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the April 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Temporary Assistance to Needy Families (TANF) Caseload Reduction Credit Report

Section 407(b)(3) of the Social Security Act (the ACT) requires a reduction of the State's required participation rate

for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 1995.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the *TANF Caseload Reduction Credit*.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in accordance with the regulations at 45 CFR 261.40 et seq. The FY 2003 report provides the information needed to calculate a caseload reduction credit (FY 2003 vs. FY 1995), and thus determine the participation standard the State must meet for the fiscal year. Form ACF-202 and Attachment 1 to Form ACF-202 are available upon request via mail or fax.

ACF-202 TANF Caseload Reduction Credit Report

- Part I - Implementation of All Eligibility Changes Made by the State Since FY 1995
- Part II - Application Denials and Case Closures, By Reason
- Part III - Description of the Methodology Used to Calculate the Caseload Reduction Estimates (Attachment 1 to Form ACF-202)
- Part IV- Certification

Summary Of Information Submitted With Agency Response

No comments were received during the public comment period.

Findings Of Fact:

The Department finds that the Delaware TANF Caseload Reduction Credit Report ("Report") for Fiscal Year 2003, as set forth in the April 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the Report is adopted and shall be final effective June 10, 2003.

Vincent P. Meconi, Secretary, DHSS, May 15, 2003

Delaware TANF Caseload Reduction Credit Report for FY 2003

Attachment 1 to Form ACF-202

Part III—Description of the Methodology Used to

Calculate the Caseload Reduction Estimates

A. Actual Caseload Reduction and Adjustment for Excess MOE Funds

- Taking into account the pro rata reduction in the FY2002 caseload due to excess MOE spending, Delaware's average monthly TANF caseload declined by 39.8 percent between FY 1995 and FY 2002. This caseload reduction number includes child-only cases, as instructed in ACF guidance.

Delaware AFDC/TANF Caseload for FY 95 and FY 02	
FY 1995 monthly average caseload	10,775
FY 2001 monthly average caseload, actual (= 5,469 TANF + 115 SSP families)	5,584
FY 2001 monthly average caseload, adjusted for excess MOE spending	5,033
Caseload decline, FY1995 to FY 2002 (not including the effect of eligibility changes)	5,742
Sources: FY1995 and FY2002 TANF caseloads from ACF/OPRE; SSP caseload from DE DSS	

- The following table shows how the pro rata reduction for excess MOE was calculated.
 - Because Delaware served its two-parent caseload under a separate state program in FY 2002, and because the State met its all-family work participation rate requirement in FY 2002, the relevant spending floor is 75 percent of the basic MOE amount.
 - The pro rata reduction takes into account the use of federal TANF funds. The pro rata reduction is calculated as the State excess MOE divided by the average cost per case, where cost is the sum of State and federal TANF funds.
 - The end result is a pro rata reduction of 551 cases. This number is subtracted above from the actual FY 2002 monthly average caseload to yield the adjusted FY2002 caseload of 5,742.

Pro Rata Reduction for Excess MOE			
(a)	DE FY1994 spending	\$29,028,092	
(b)	MOE (75% of (a))	\$21,771,069	

(c)	DE FY2002 MOE spending	\$27,218,130	
(d)	Federal TANF block grant funds spent in FY2002	\$27,980,170	
(e)	Total TANF spending for FY2002	\$55,198,300	= (c) + (d)
(f)	Average spending per case	\$9,885	= (e) / FY2002 caseload = (e) / (5,469 TANF + 115 SSP)
(g)	Excess MOE for FY2002	\$5,447,061	= (c) - (b)
(h)	Cases funded by excess MOE	551	= (g) / (f)

B. Changes Required by Federal Law

1. Parents/caretakers must work after 24 months of assistance or when job-ready

- The estimated impact of this federal policy on Delaware’s caseload is 0, because the State’s “work for your welfare” requirement effectively supplants the federal policy. The caseload impact of the State policy is described below in Section C.5.

2. Teen parents must live in adult-supervised settings to receive assistance

- The estimated impact of this federal policy since FY 1995 is 0, because the policy has been codified in the State manual for many years prior to FY 1995.

3. A State must deny assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in more than one State

- For fraudulently misrepresenting residence, Delaware removes the adult’s needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult’s needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware’s automated TANF eligibility

system is currently unable to identify such instances, if any exist.

4. A State must deny assistance for fugitive felons, probation violators, or parole violators

- For fugitive felons, probation violators, and parole violators, Delaware removes the adult’s needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult’s needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware’s automated TANF eligibility system is currently unable to identify such instances, if any exist.

5. A State must deny assistance for certain individuals convicted of drug-related felonies

- For persons convicted of drug-related felonies, Delaware removes the person’s needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult’s needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware’s automated TANF eligibility system is currently unable to identify such instances, if any exist.

6. Non-qualified aliens are ineligible for Federal TANF assistance

- The total number of cases denied as non-qualified aliens since the federal policy took effect is 88. This includes denials in FY1998, FY1999, FY 2000, FY2001 and FY2002.
- The count of denied non-qualified aliens was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been denied as non-qualified aliens. See Section D for a description of this adjustment.

C. State-Implemented Changes

1. Fill-the-Gap Budgeting for Earnings

- The average monthly number of cases in FY2002 that were subject to fill-the-gap budgeting for earnings is 542. This number is based on a monthly query to the Delaware Client Information System (DCIS) on all open cases with earnings. Cases were counted as subject to fill-the-gap budgeting

for earnings in a month only if earnings minus applicable disregards were above the payment standard for the relevant family size.

2. Increased Resource Limit

- The average monthly number of cases open in FY2002 because of the increased resource limits is 274. This number is based on a count of the number of cases open in a month whose assets—cash plus vehicle—were above the previous limits and below the current limit.
- Some cases were subject to both the increased resource limit and fill-the-gap budgeting for earnings. To avoid such double-counting, the number of cases open because of the increased resource limit—274—*excludes* cases that were also open due to fill-the-gap budgeting.

3. Sanctions for Noncompliance with Contract of Mutual Responsibility (CMR) Provisions

- The average monthly number of cases closed in FY2002 because of CMR sanctions is 548. This number is based on monthly cumulative counts of cases closed due to CMR sanctions for FY 1996 through September 2002.
- The CMR sanction is a graduated fiscal sanction. Sanctions for noncompliance are initially \$50 and increase by \$50 every month until there is compliance, or until the sanction amount exceeds the grant amount. Cases are counted as closed due to CMR sanctions only when the sanction amount exceeds the grant amount.
- The CMR count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to CMR sanctions. See Section D for a description of this adjustment.

4. Sanctions for Noncompliance with Employment and Training Requirements

- The average monthly number of cases closed in FY 2002 because of noncompliance with employment and training (E&T) requirements is 621.
- The sanction for noncompliance with E&T requirements is a 1/3 reduction of the grant amount for the first occurrence, a 2/3 reduction for the second occurrence, and permanent case closure for the third occurrence. Cases are counted as closed due to E&T sanctions only for the third occurrence.

- Because the E&T level 3 sanction is permanent, the number of cases closed due to E&T sanctions as of the beginning of FY2002 is a cumulative count of all cases closed prior to FY2002. To this number we add the average monthly number of cases closed due to E&T sanctions *during* FY2002.
- The E&T sanction count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to E&T sanctions. See Section D for a description of this adjustment.

5. Work for Your Welfare Requirement

- The average monthly number of cases closed in FY 2002 because of noncompliance with the “Work for Your Welfare” work requirement is 989.
- The workfare count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to noncompliance with the workfare requirement. See Section D for a description of this adjustment.

6. Time Limit

- Prior to January 2000, Delaware limited receipt of Temporary Assistance to Needy Families (TANF) – for families in the Time Limited Program—to 48 cumulative months, subject to compliance with Contract of Mutual Responsibility and Work for Your Welfare requirements.
- Effective January 1, 2000 the time limit for receipt of TANF cash benefits is 36 cumulative months. Individuals found eligible for TANF prior to January 1, 2000 will still have a 48 month time limit even if they reapply for benefits after January 1, 2000.
- Thirteen (13) cases reached the four-year time limit during FY 2002. No cases had reached the newer three-year time limit by the end of FY 2002.

D. Impacts of Eligibility Changes: Adjusting for Cases that Would Have Left TANF for Other Reasons

- As noted in ACF’s guidance for submitting caseload reduction credit information, “a State may adjust its estimate of the impact of a change over time to account for likely caseload decline that would have occurred due to other factors, such as earnings, not associated with any eligibility change.” A given cohort of TANF cases will leave

TANF over time, even absent sanctions and time limits. Most research shows a monotonic decline over time in the rate of TANF receipt for a given cohort, even when recidivism is accounted for.

- We estimated the rate at which cases would have left over time in the absence of eligibility changes using TANF receipt rates for the control group from the random assignment evaluation of the State's ABC program. The control group is close to an ideal counterfactual because control group members were not subject to the eligibility changes. In addition, the control group receipt rates are measured taking into account recidivism.
- More specifically, we used TANF receipt rates for control group cases that were *ongoing* at the point of random assignment, because cases that are sanctioned off or reach the time limit are ongoing cases at the time they are sanctioned or reach the time limit. Using TANF receipt rates for ongoing control group cases is more conservative than using TANF receipt rates for all control group cases, because exit rates are lower for ongoing cases.
- The TANF receipt rates for ongoing control group cases show that:
 - On average over the first year since random assignment, 5.1 percent of cases left TANF;
 - On average over the two years since random assignment, 7.1 percent of cases left TANF;
 - On average over the three years since random assignment, 15.4 percent of cases left TANF;
 - On average over the four years since random assignment, 43.3 percent of cases left TANF;
 - On average over the five years since random assignment, 63.3 percent of cases left TANF;
- On average over the six years since random assignment, 79.0 percent of cases left TANF; and
- On average over the seven years since random assignment, 88.7 percent of cases left TANF.
- These net exit rates were applied to the counts of cases that closed due to eligibility changes to get the adjusted number of cases closed due to eligibility changes. For example, the average monthly number of cases closed due to CMR sanctions in FY1998 was 489. Using the control group net exit rates, we assume that 63.3 percent of these cases would have left for other reasons by the end of FY2002, so the adjusted number of cases closed due to CMR sanctions in FY 1998 was 179, which is $489 * (1 - .633)$. A similar adjustment was made to cases closed due to sanctions during other years.
- This approach has two limitations. First, ongoing control group cases became subject to welfare reform policies on average during follow-up quarter 6 or 7. Even so, few or no control group cases would have reached the "work for your welfare" two-year time limit before another eight quarters, meaning follow-up quarters 14 or 15. The second limitation is that, at this point follow-up data are available only through quarter 10. Consequently, net exit rates were extrapolated for quarters 11 through 20, because the adjustment requires exit rates for five full years.

State <u>Delaware</u>			Fiscal Year <u>2003</u>
PART I – Implementation of All Eligibility Changes Made by the State Since FY 1995			
#	Eligibility Change	Implementation Date	Estimated Impact on Caseload Since Change (positive or negative impact)
<u>Changes Required by Federal Law</u>			
1	Parents/caretakers must work after 24 months of assistance	March 1997	0
2	Teen parents must live in adult-supervised settings	Prior to FY 1995	0
3	Deny assistance for 10 years for fraudulently misrepresenting residence to obtain assistance in more than one State	March 1997	0
4	Deny assistance for fugitive felons, probation violators, or parole violators	March 1997	0
5	Deny assistance for certain individuals convicted of drug-related felonies	March 1997	0
6	Deny assistance to non-qualified aliens	March 1997	-88
<u>State-Implemented Changes</u>			

GENERAL NOTICES

Changes Related to Income and Resources			
1	Fill-the-gap budgeting for earnings	October 1995	+542
2	Increased resource limit	October 1995	+274
Changes Related to Categorical or Demographic Eligibility Factors			
	None.		
Changes Related to Behavioral Requirements			
3	Contract of Mutual Responsibility sanctions	October 1995	-548
4	Sanctions for noncompliance with employment and training requirements	October 1995	-621
Changes Due to Full-Family Sanctions			
Other Eligibility Changes			
5	Work for your welfare requirement	October 1995	-989
6	Time limit	October 1995	-27
Estimated Total Net Impact on the Caseload of All Eligibility Changes			-1,458
Total Prior Year Caseload			5,584
Estimated Caseload Reduction Credit			39.8 percent (includes adjustment for excess MOE)

State <u>Delaware</u> Fiscal Year <u>2003</u>					
PART II – Application Denials and Case Closures, By Reason					
	Fiscal Year 1995 ¹			Fiscal Year 2002	
Reason for Application Denials	Number	Percentage	Number	Percentage	
Failure to comply with procedural requirements	18	31.6	2,075	25.3	
Income exceeds standards	15	26.3	3,460	42.2	
Application withdrawn	14	24.6	0	0.0	
No eligible child	0	0	1,542	18.8	
Resources exceed limits	6	10.5	314	3.8	
Not deprived of support or care	1	1.8	0	0.0	
Ineligible alien	1	1.8	134	1.6	
Other	2	3.5	672	8.2	
¹ Delaware's FY 1995 denial and closure numbers are based on the State's quality control sample					
Total Application Denials	57	100.1	8,197	100.0	

Reasons for Case Closures	Number	Percentage	Number	Percentage
Failure to comply with procedural requirements	60	46.5	1,379	15.8
Earnings exceed standard of need	29	22.5	1,197	13.7
Voluntary withdrawal/recipient initiative	16	12.4	2,462	28.2
No longer eligible child	10	7.8	2,914	33.4
Moved or cannot locate	8	6.2	707	8.1
No longer deprived of support or care	3	2.3	0	0.0
Support increased from person inside or outside home	0	0	3	0.0
Resources exceed limits	0	0	60	0.8
Other cash income	2	1.6	0	0.0
Failure to comply with JOBS program requirements	0	0	0	0.0
Other	1	0.8	3	0
Total Case Closures	129	100.1	8,732	100.0

State <u>Delaware</u> Fiscal Year <u>2003</u>
Part III – Description of the Methodology Used to Calculate the Caseload Reduction Estimates (attach supporting data to this form)
See attachment. State <u>Delaware</u> Fiscal Year <u>2003</u>
PART IV -- Certification I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995. (A summary of public comments is attached.)
_____ (signature)
_____ (name)
_____ (title)

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

**Medicaid/Medical Assistance Third Party Liability
(TPL) Program**

**REVISION OF THE REGULATIONS
OF DELAWARE'S TITLE XIX
MEDICAID STATE PLAN
ATTACHMENT 4.22-A, PAGE 1**

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to amend the Title XIX Medicaid State Plan to add *Health Insurance Carriers* to the list of data exchange sources and types. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendment

Code of Federal Regulations, 42 CFR §§433.138 and 139 details state plan requirements to establish the legal liability of third parties to pay for services under the state plan and for payment of claims involving third parties.

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) publishes this notice, pursuant to federal law and regulations in Section §1902(a)(25) of the Social Security Act, Title 19 requiring States take all reasonable measures to identify legally liable third parties and treat verified TPL as a resource of the Medicaid applicant or recipient; and, providing for the collection of health insurance information. This notice is being given to provide information of public interest with respect to the intent of DSS to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to add *Health Insurance Carriers* to the list of data exchange

sources and types.

The purpose of establishing and maintaining effective TPL programs is to reduce Medicaid expenditures. Third party resources are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients. A few common third party resources are Medicare, health insurance, worker's compensation, automobile medical insurance, and, medical support order. TPL information is obtained by DSS primarily during the Medicaid/Medical Assistance eligibility determination and redetermination processes. Supplementing this initial contact, DSS uses a combination of data matches/exchanges with both public and private entities, edits within the Medicaid Management Information System (MMIS), direct inquiries to recipients, non-custodial parents, and other potential liable parties. The intent of the state plan amendment includes the requirement that health insurance carriers provide data matches to update client/recipient third party resources.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by April 30, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**Summary Of Comments Received With Agency
Response**

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the Delaware Developmental Disabilities Council (DDDC) offered the following similar observations:

First, there is no definition of "health insurance carriers". Informally, it is common to refer to an insured as someone who "carries insurance" on self, spouse, or children. Alternatively, a carrier may refer to an insurer or provider of insurance. The term "carrier" does not appear in relevant federal regulations, 42 CFR §§433.138-433.139. The Council infers that DSS intends "carrier" to refer to an insurer. It would be preferable to include a short definition for clarity.

DSS Response: DSS refers to the terms "health insurance" and "carriers" as defined in 18 Del. C. §§903 and 3602(3):

§ 903. "Health insurance" defined. Health insurance is

insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.

§ 3602. Definitions. 3) "Carrier" means an entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

Second, it is unclear how DSS intends to secure cooperation from "carriers". In some contexts, the Centers for Medicare and Medicaid Services expect the state Medicaid agency to enter into agreements with entities to receive data. It is unclear how DSS expects to obtain the cooperation of "carriers" to submit data. See e.g., 42 CFR §433.138(d)(4) and (h)(2) It is also unclear whether DSS is prepared to pay "the reasonable costs incurred in furnishing information" consistent with 42 CFR 433.138(i). It would be useful if DSS could share its proposed methodology at least in its commentary on the plan amendment.

DSS Response: Failure to comply with a request for data exchange will result in a referral to the Delaware Office of the Insurance Commissioner. The agency's contractor conducting the data matches indicated they have had very few problems with outright refusals. Reimbursement costs varies and would be based on CPU costs and labor costs. Most carriers produce the information needed for the data match for their own purposes so there may be no incremental costs. However, any requests for reimbursement for reasonable costs would be honored.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the April 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Programs related to the Third Party Liability Program be adopted and shall be final effective June 10, 2003.

Vincent P. Meconi, Secretary, DHSS, May 15, 2003

DSS FINAL ORDER REGULATIONS #03-16

ATTACHMENT 4.22-A
Page 1
OMB NO.:0938-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: **DELAWARE**

Requirements for Third Party Liability (TPL) - Identifying Liable Resources

1. Frequency of TPL matches:
 - a. SSA wage - quarterly
 - b. IV-A agency - in Delaware is the same as the Title XIX agency and updates are available, daily
 - c. State Workmen's Compensation files - weekly
 - d. Motor vehicle - not computerized - no match available
 - e. SWICA - quarterly
 - f. Health Insurance Carriers - biannually

2. Follow-up requirements of 42 CFR 433.138 (g) (1) (i) and (g) (2) (i) :

As soon as any matches on employers are received by the Delaware Client Information System (DCIS), the system will automatically generate a letter to the employer to verify health insurance coverage. This action will be taken within 30 days of the receipt of match data.

3. State motor vehicle match is unavailable because the information needed for TPL is not carried in the State's motor vehicle automated system.

4. Trauma code reports are produced weekly by the fiscal agent. The TPL unit sends an accident inquiry form to the client/provider within two weeks regarding potential TPL. Positive responses result in a request for claims history and subsequent bills generated to the applicable insurance company or attorney. Any information on ongoing legally liable third party resources is immediately entered into the third party database, which is part of the MMIS.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Board of Nursing in accordance with 24 Del.C. 1906(1) has proposed to revise the Rules and Regulations regarding Board committees.

The proposed revisions to Section 12 of the Board's Rules and Regulations will define selection of committee members, term limits, and committee attendance.

A public hearing will be held on Wednesday, July 9, 2003 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516 or 744-4515. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be July 9, 2003.

**DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT PROGRAM**

PLEASE TAKE NOTICE that, pursuant to 3 Del.C. §§ 2220 and 2221, the Department of Agriculture has developed, in conjunction with the Delaware Nutrient Management Commission, and proposes to adopt regulations establishing requirements for implementation of mandatory nutrient management plan reporting pursuant to Delaware's nutrient management laws (3 Del.C. Chapter 22) and Section 5, 72 Del. Laws, c. 60, and for persons selected for mandatory nutrient management plan reporting to register with the Commission. These regulations are proposed to meet the mandate set forth in Section 5, and also 3 Del.C. Chapter 22, and put into effect the purpose of that chapter to help improve and maintain the quality of Delaware's ground and surface waters in the interest of the overall public welfare. These proposals represent new substantive and procedural regulations in areas not previously regulated, and their term shall be permanent unless subsequently amended or repealed in accordance with the Administrative Procedures Act (29 Del.C. Chapter 101). The Department of Agriculture, in conjunction with the Delaware Nutrient Management Commission, will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department and the Commission in care of

William R. Rohrer, Nutrient Management Program Administrator, at the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. The final date to submit written comments shall be July 1, 2003. Copies of the proposed regulations may be obtained by contacting Mr. Rohrer.

THOROUGHBRED RACING COMMISSION

The Commission issues these proposed rules pursuant to 3 Del. C. §10103 and 29 Del. C. §10115. The Commission will accept written comments from June 1, 2003 through June 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on June 30, 2003 at 10:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John F. Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. These rules were published in the May, 2003 Register with a listed public hearing date of May 21, 2003. However, due to a scheduling issue, the public hearing can not be held on May 21, 2003 so the Commission is resubmitting the rules for publication.

The Commission proposes the following three rule amendments:

- 1) amend Rule 1.28 to clarify the definition of "Meeting" to include all race dates approved by the Commission under 3 Del. C. §10122(c);
- 2) amend Rule 3.02(a) to clarify that the authority of the Stewards at the Meeting shall be during the period as required by the Commission; and
- 3) amend Rule 19.01(d) to provide that one steward may hold a hearing during emergencies or during periods when there is no live racing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, June 19, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE
OFFICE OF THE STATE LOTTERY**

The Lottery issues these proposed amendments pursuant to 29 Del. C. §4805(a) and 29 Del. C. §10115. The Lottery will accept written comments from June 1, 2003 through June 30, 2003. The Lottery will hold a public hearing on the proposed amendments on June 26, 2003 at 3:00 p.m. at the

Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Wayne Lemons, Lottery Director, at the same above-listed address.

The Lottery proposes to amend Video Lottery Regulation as follows:

1. amend Video Lottery Regulation 5.2.1(2) to provide that the maximum bet of \$100 is subject to Video Lottery Regulation 7.3 which permits the Director to authorize extended plays or games on a video lottery machine;

2. amend Video Lottery Regulation 6.10 to provide that video lottery agents exercise caution and good judgment in extending credit and act in compliance with all federal and state laws;

3. repeal Video Lottery Regulation 6.18 which prohibits video lottery agents from providing financial assistance or credit to players;

4. amend Video Lottery Regulation 6.30 to provide that no automated teller machine may be within twenty-five feet of any video lottery machine;

5. amend Video Lottery Regulation 7.2 to lower the minimum bet on video lottery machines from \$.05 to \$.01;

6. amend Video Lottery Regulation 7.3 to provide that the Director may authorize extended plays and games on video lottery machines which are not subject to the \$100 maximum bet.

Neighborhood Homes including general licensing requirements, provider performance standards, services required for persons residing in Neighborhood Homes, environmental, medical, transportation, and safety standards.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Tuesday, July 1, 2003, 9:00 AM
Room 198, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Wednesday, July 2, 2003, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the July 2 public hearing.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

DIVISION OF SOCIAL SERVICES

Regulation 55.0, Neighborhood Homes for Persons with Developmental Disabilities

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection (DLTCRP), has drafted regulations replacing in their entirety regulations pertaining to Neighborhood Homes. In addition to replacing regulations currently enforced by DLTCRP, these regulations incorporate Certification Standards enforced by the Division of Developmental Disabilities Services (DDDS), but not previously promulgated as regulations. These proposed regulations also replace the DDDS Certification Standards in their entirety. The proposed regulations address provisions required of

DIVISION OF SOCIAL SERVICES PUBLIC NOTICE

State-Funded Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS), publishes this notice of proposed changes to the State-funded medical assistance program. The proposed changes in the Division of Social Services Manual (DSSM) amends the rules used to determine eligibility for the State-funded medical assistance program in order to sustain the current program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed changes must submit same to Sharon L. Summers, Policy and Program

Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Title Of The Regulations:

██████████ MILESTONE COMPLIANCE
██████████ KENT AND NEW CASTLE
██████████ ing Adequate Progress toward
██████████ National Ambient Air Quality
██████████ Ozone.

Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document proposed herein is for the milestone year of 1999, and thus termed as Delaware's 1999 Milestone Compliance Demonstration.

Notice Of Public Comment:

A public hearing will be held on June 26, 2003, beginning at 6:00 pm in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, May 14, 2003

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Title Of The Regulations:

AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION For The Philadelphia-wilmington-trenton Ozone Non-attainment Area Including A Revision Of The 2005 Mobile Source Emission Budgets Using Mobile6.

Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to develop and submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate its capability of attaining the 1-hour ozone National Ambient Air Quality Standard in 2005. This SIP revision, termed as the Phase II Attainment Demonstration, was originally developed and submitted to EPA in May 1998. The SIP revision was amended in January 2000, December 2000, and July 2001. The purpose of this action is to amend the Phase II Attainment Demonstration to reflect changes in the 2005 mobile source emission budgets using the new MOBILE6 emission model. No other changes to the plans are proposed.

Notice Of Public Comment:

A public hearing will be held on June 26, 2003 beginning at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, May14, 2003

DIVISION OF FISH AND WILDLIFE

Title Of The Regulations:

Horseshoe Crab Regulations

Brief Synopsis Of The Subject, Substance And Issues:

This regulatory package consists of a comprehensive revision, re-titling, and re-numbering of Shellfish Regulations S-50 through S-61, plus new regulations specific to horseshoe crabs. This revision will create a stand-alone section in the Shellfish Regulations specific to horseshoe crabs. This regulatory package establishes a seasonal closure on horseshoe crab harvesting, proposes yearly harvest limits, defines what percentage of the total annual harvest may be taken in dredges prior to the seasonal closure, eliminates by-catch provisions, refines licensing and reporting requirements, sets limits on the amount of

horseshoe crabs that may be used as bait in any one shellfish or finfish pot, and requires the use of bait saving devices when horseshoe crabs are used as bait in conch pots.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on these proposed amendments and new regulations will be held at the Department of Natural Resources and Environmental Control Auditorium at 89 Kings Highway, Dover, DE at 7:30 PM on June 23, 2003. The record will remain open for written, faxed, or e-mailed comments until 4:30 PM June 30, 2003. E-mail should be addressed to Roy.Miller@state.de.us.

**DELAWARE RIVER BASIN
COMMISSION**

**25 STATE POLICE DRIVE
P.O. BOX 7360
WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet on Thursday, June 26, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.



Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

WHAT'S NEW

The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
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